

# **EXHIBIT 32**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEW JERSEY

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4 IN RE: JOHNSON & JOHNSON MDL NO.:  
5 TALCUM POWDER PRODUCTS 16-2738 (FLW)(LGH)  
6 MARKETING, SALES PRACTICES,  
7 AND PRODUCTS LIABILITY  
8 LITIGATION

9 -----

10

11 EXPERT DEPOSITION OF  
12 WILLIAM M. SAGE, MD, JD

13

14 Thursday, September 23, 2021

15 8:13 a.m.

16

17 Washington, DC 20006

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19

20

21 Reported by:  
22 Denise Dobner Vickery, NCRA Registered Merit  
23 Reporter, NCRA Certified Realtime Reporter,  
24 Notary Public

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Thursday, September 23, 2021</p> <p>9 8:13 a.m.</p> <p>10</p> <p>11 Expert Deposition of WILLIAM M. SAGE, MD, JD,</p> <p>12 held at the offices of:</p> <p>13</p> <p>14 ASHCRAFT &amp; GEREL LLP</p> <p>15 1825 K Street NW</p> <p>16 Suite 700</p> <p>17 Washington, DC 20006</p> <p>18</p> <p>19</p> <p>20 Pursuant to notice, before Denise Dobner</p> <p>21 Vickery, Certified Realtime Reporter, Registered</p> <p>22 Merit Reporter, and Notary Public in and for the</p> <p>23 District of Columbia.</p> <p>24</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 For Plaintiffs:</p> <p>4 LEVIN PAPATONIO RAFFERTY PROCTOR</p> <p>5 BUCHANAN O'BRIEN BARR &amp; MOUGEY, PA</p> <p>6 BY: CHRISTOPHER V. TISI, ESQ.</p> <p>7 316 South Baylen Street, Suite 600</p> <p>8 Pensacola, FL 32502-5996</p> <p>9 850.435.7176</p> <p>10 ctisi@levinlaw.com</p> <p>11</p> <p>12</p> <p>13 For Defendants Johnson &amp; Johnson and Johnson &amp;</p> <p>14 Johnson Consumer, Inc.:</p> <p>15 SHOOK HARDY &amp; BACON LLP</p> <p>16 BY: MARK C. HEGARTY, ESQ.</p> <p>17 2555 Grand Blvd.</p> <p>18 Kansas City, MO 64108</p> <p>19 816.474.6550</p> <p>20 mhegarty@shb.com</p> <p>21</p> <p>22 Also Present Remotely:</p> <p>23 KATE STONE, ESQ., Faegre Drinker</p> <p>24 Biddle &amp; Reath LLP</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 For MDL Plaintiffs:</p> <p>4 BEASLEY ALLEN LAW FIRM</p> <p>5 BY: DR. MARGARET M. THOMPSON, ESQ.</p> <p>6 218 Commerce Street</p> <p>7 Montgomery, AL 36104</p> <p>8 1.800.898.2034</p> <p>9 margaret.thompson@beasleyallen.com</p> <p>10</p> <p>11</p> <p>12</p> <p>13 For MDL Plaintiffs:</p> <p>14 ASHCRAFT &amp; GEREL LLP</p> <p>15 BY: MICHELLE A. PARFITT, ESQ.</p> <p>16 JAMES F. GREEN, ESQ.</p> <p>17 1825 K Street NW, Suite 700</p> <p>18 Washington, DC 20006</p> <p>19 202.759.7648</p> <p>20 mparfitt@ashcraftlaw.com</p> <p>21 jgreen@ashcraftlaw.com</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 INDEX</p> <p>2 EXAMINATION OF WILLIAM M. SAGE, MD, JD PAGE</p> <p>3 BY MR. HEGARTY 8</p> <p>4 AFTERNOON SESSION 213</p> <p>5 DR. THOMPSON 426</p> <p>6</p> <p>7 SAGE DEPOSITION EXHIBITS</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 Exhibit 1 Sage Invoice dated 8/10/2021 11</p> <p>10 Exhibit 2 Canada Screening Assessment 52</p> <p>11 Talc, April 2021, Pages 1-65</p> <p>12 Exhibit 3 Sage Curriculum Vitae 58</p> <p>13 Exhibit 4 7/2/2021 Expert Report of 75</p> <p>14 William M. Sage, MD, JD</p> <p>15 Exhibit 5 Literature from Expert Report 82</p> <p>16 Pages 1-18</p> <p>17 Exhibit 6 Second Amended Notice of Oral 96</p> <p>18 Deposition of William M. Sage, MD, JD</p> <p>19 and Duces Tecum,</p> <p>20 Exhibit 7 HHS/Musser Letter dated 4/1/2014 151</p> <p>21 Re two Citizen Petitions</p> <p>22 Exhibit 8 NCI: Ovarian, Fallopian Tube, and 174</p> <p>23 Primary Peritoneal Cancer</p> <p>24 Prevention (PDQ), Pages 1-20</p>

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<p>1 SAGE DEPOSITION EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 19 Plaintiffs' MDL Expert Witnesses 372</p> <p>4 Exhibit 20 IARC Monographs on the Evaluation 384</p> <p>5 of Carcinogenic Risk to Humans</p> <p>6 Volume 93, Carbon Black, Titanium</p> <p>7 Dioxide, and Talc, Lyon, France 2010</p> <p>8 Exhibit 21 Lessons From Breast Implant 390</p> <p>9 Litigation by William M. Sage</p> <p>10 Exhibit 22 JAMA: Association of Powder Use 394</p> <p>11 in the Genital Area With Risk of</p> <p>12 Ovarian Cancer, O'Brien et al.</p> <p>13 Exhibit 23 Materials Considered_William 410</p> <p>14 Sage, MD, JD Supplemental Materials</p> <p>15 Exhibit 24 Safety Assessment of Talc as 415</p> <p>16 Used in Cosmetics, Fiume et al.</p> <p>17 Exhibit 25 Witness Stack of Documents 418</p> <p>18 Exhibit 26 Literature, Depositions and 423</p> <p>19 Transcripts, Pages 1-3</p> <p>20 Exhibit 27 2/10/98 FDA's Cosmetic Program: 426</p> <p>21 Current Projects and Resources</p> <p>22 and A Discussion of the "Model"</p> <p>23 Program, PCPC0058604 - 0058654</p> <p>24</p>	<p>1 an expert witness ran through this Schedule C</p> <p>2 business?</p> <p>3 A. It will.</p> <p>4 Q. When did you set up your Schedule C</p> <p>5 business?</p> <p>6 A. Many years ago.</p> <p>7 Q. As far as the fees that you do earn</p> <p>8 as an expert witness, do they go directly to you?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any other sources of</p> <p>11 income besides salary from the University of Texas</p> <p>12 and any fees you earn as speaker or as an expert?</p> <p>13 A. No, beyond the usual investments</p> <p>14 that people might have.</p> <p>15 Q. What are you charging plaintiffs'</p> <p>16 counsel in this case for your -- your time and</p> <p>17 your consultation?</p> <p>18 A. I'm charging \$800 an hour.</p> <p>19 Q. On what do you base that \$800 an</p> <p>20 hour figure?</p> <p>21 A. I do this very, very seldom. So I</p> <p>22 made some inquiries among friends for benchmarks,</p> <p>23 and that seemed to be an appropriate one.</p> <p>24 Q. That was going to be my next</p>

<p style="text-align: right;">Page 10</p> <p>1 question.</p> <p>2 Have you ever been paid in any other</p> <p>3 situation at the rate of \$800 an hour?</p> <p>4 A. Specifically 800? No. Perhaps 750,</p> <p>5 perhaps 6. The last time I did any expert witness</p> <p>6 work for a private party was many years -- was</p> <p>7 probably 10 years ago or so.</p> <p>8 Q. What was that expert witness</p> <p>9 activity for a private party?</p> <p>10 A. I was assisting two merging</p> <p>11 hospitals in antitrust litigation.</p> <p>12 Q. Was that a matter in which you were</p> <p>13 designated as an expert witness?</p> <p>14 A. Yes. Again, I'm not a litigator.</p> <p>15 So I don't always get the procedural posture</p> <p>16 right. It was in anticipation of an</p> <p>17 administrative trial before the FTC that didn't</p> <p>18 ever happen.</p> <p>19 Q. Okay. You don't make \$800 an hour</p> <p>20 as a professor at the University of Texas, right?</p> <p>21 A. No.</p> <p>22 Q. Did anyone outside of perhaps the</p> <p>23 lawyers for the plaintiffs in this case assist you</p> <p>24 in any way with preparing your expert witness</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Would you -- this is yours.</p> <p>3 A. Okay.</p> <p>4 Q. Would you please look at Exhibit</p> <p>5 No. 1 and tell me whether that is an invoice that</p> <p>6 you prepared in connection with your work on this</p> <p>7 MDL case.</p> <p>8 A. Yes, it is.</p> <p>9 May I just ask you. While we're</p> <p>10 doing this, when you hand me things, what am I --</p> <p>11 am I supposed to keep them in a pile, return them</p> <p>12 to you? I don't know.</p> <p>13 Q. I would recommend you keep them in a</p> <p>14 pile as I may refer back to them.</p> <p>15 A. Okay. Thank you.</p> <p>16 Q. So with regard to Exhibit No. 1,</p> <p>17 this is an invoice that you prepared; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. It's dated August 10, 2021 and lists</p> <p>21 a total amount of \$64,000; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Have you been paid for this invoice?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 report?</p> <p>2 A. I'm sorry. Would you repeat that?</p> <p>3 Q. Sure.</p> <p>4 Did anyone assist you in preparing</p> <p>5 your expert witness report?</p> <p>6 A. I had assistance with formatting,</p> <p>7 footnoting, and finding appropriate references</p> <p>8 from the plaintiffs' lawyers.</p> <p>9 Q. Who in particular helped you with</p> <p>10 those types of activities?</p> <p>11 A. Various people on the team and so, I</p> <p>12 mean, Dr. Thompson and then I know people more by</p> <p>13 first name. Patrick, Brianne. I don't remember</p> <p>14 everybody's last name.</p> <p>15 Q. Did anyone outside of the lawyers</p> <p>16 for the plaintiffs in any way assist you in</p> <p>17 preparing your report?</p> <p>18 A. No.</p> <p>19 MR. HEGARTY: I'm going to</p> <p>20 mark as Exhibit No. 1 the invoice that we</p> <p>21 have been provided from you by counsel</p> <p>22 for the plaintiffs.</p> <p>23 (Document marked for</p> <p>24 identification as Sage Exhibit 1.)</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Have you prepared any other invoices</p> <p>2 besides the one we marked as Exhibit No. 1?</p> <p>3 A. No.</p> <p>4 Q. Have you generated additional time</p> <p>5 in which you will invoice since preparing this</p> <p>6 invoice on August 10, 2021?</p> <p>7 A. Yes.</p> <p>8 Q. How much additional time do you plan</p> <p>9 to invoice through today? If you can estimate it.</p> <p>10 A. I haven't added it up. I would say</p> <p>11 ballpark, if this was 80 hours, 40 hours.</p> <p>12 Q. Okay. With regard to this</p> <p>13 particular invoice, in the "For" section you say</p> <p>14 "Review of materials in preparation of expert</p> <p>15 report from June 5 to June 2, 2021."</p> <p>16 Does June 5 represent the first date</p> <p>17 that you started working on this case?</p> <p>18 A. So you said June 2. I think you</p> <p>19 meant July 2 so...</p> <p>20 Q. July 2. I'm sorry.</p> <p>21 A. June 5th represents the first date</p> <p>22 that I billed any time. All of my preliminary</p> <p>23 discussions, investigations, deciding what the</p> <p>24 case was about, and what my preliminary opinions</p>

<p style="text-align: right;">Page 14</p> <p>1 might be I regarded as not billable.</p> <p>2 Q. With regard to the reference below</p> <p>3 the "For" line to "Initial Meetings and Case</p> <p>4 Review," who did you meet with initially that's</p> <p>5 referenced in that entry?</p> <p>6 A. To the best of my recollection,</p> <p>7 these were Zoom meetings with people I hadn't</p> <p>8 necessarily met before, but Dr. Thompson,</p> <p>9 Ms. O'Dell, Ms. Parfitt I think were the first</p> <p>10 significant call. And then Patrick and Brianne at</p> <p>11 some -- at some point early on, but I don't</p> <p>12 remember the details.</p> <p>13 Q. That same line refers to an entry or</p> <p>14 refers to "Case Review."</p> <p>15 What did you mean when you put in</p> <p>16 "Case Review"?</p> <p>17 A. Cutting me a little slack on the</p> <p>18 terminology because I don't do this very often, I</p> <p>19 just meant this litigation. So, you know,</p> <p>20 whatever materials were -- were offered to me or</p> <p>21 whatever news reports I might have found just on</p> <p>22 the posture of this litigation. I hadn't been</p> <p>23 following any of the individual cases, and I</p> <p>24 hadn't specifically been following multidistrict</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Were the -- when you say -- what was</p> <p>2 the preliminary outline of issues?</p> <p>3 A. That was perhaps my inartful way of</p> <p>4 saying thinking about the issues and how I would</p> <p>5 express my opinions.</p> <p>6 Q. Was it a draft of your report?</p> <p>7 A. Almost -- I don't know exactly how</p> <p>8 to answer that. I mean, it was my initial</p> <p>9 thinking. So whether it constitutes a draft in my</p> <p>10 notes or not, I really can't say. That's, I</p> <p>11 think, a matter of your practice and requirements.</p> <p>12 Q. Well, the entry below that does</p> <p>13 refer to "Preparing Expert Report."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. So I see that as was it not two</p> <p>17 different activities, one preparing an outline and</p> <p>18 one drafting your report?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: I itemized them</p> <p>21 differently, I believe, to reflect the</p> <p>22 stages of my thinking. I'm sure we'll</p> <p>23 discuss much of this today.</p> <p>24 The stages of my thinking in</p>
<p style="text-align: right;">Page 15</p> <p>1 litigation.</p> <p>2 Q. The next line below the line</p> <p>3 "Initial Meetings and Case Review" says</p> <p>4 "Preliminary Outline of Issues."</p> <p>5 Did you actually prepare a document</p> <p>6 where you outlined the issues?</p> <p>7 A. Not a -- not a structured document.</p> <p>8 My -- my own notes and my kind of musings about</p> <p>9 how -- how this would develop as a report.</p> <p>10 Q. Do you still have those notes?</p> <p>11 A. I don't know, actually.</p> <p>12 Q. Were they handwritten or something</p> <p>13 you typed on the computer?</p> <p>14 A. Handwritten.</p> <p>15 MR. HEGARTY: We would ask</p> <p>16 that the doctor -- if you ask the doctor</p> <p>17 to look for those notes.</p> <p>18 DR. THOMPSON: And we'll</p> <p>19 object as draft of report.</p> <p>20 MR. HEGARTY: Sure.</p> <p>21 Understood, but we would ask that --</p> <p>22 that -- well, let me back up before I</p> <p>23 make the further request.</p> <p>24 BY MR. HEGARTY:</p>	<p style="text-align: right;">Page 17</p> <p>1 terms of an outline of issues just</p> <p>2 thinking about: What are the</p> <p>3 self-regulatory obligations? What are</p> <p>4 the disclosure obligations? You know,</p> <p>5 what are the differences between</p> <p>6 cosmetics regulations and drug</p> <p>7 regulations that are relevant?</p> <p>8 Various things of that sort</p> <p>9 that are more general and almost</p> <p>10 certainly wouldn't have involved</p> <p>11 reviewing any corporate documents or --</p> <p>12 or deposition testimony from the</p> <p>13 litigation. Whereas, the deep dive is</p> <p>14 what followed that, and that's why I made</p> <p>15 the distinction.</p> <p>16 MR. HEGARTY: Well, we'll make</p> <p>17 a request for those notes. I understand</p> <p>18 your objection. I just wanted to state</p> <p>19 it on the record and we'll do necessary</p> <p>20 follow-up, okay?</p> <p>21 DR. THOMPSON: (Nods head).</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. The University of Texas has</p> <p>24 disclosure policies for all work outside of your</p>

<p style="text-align: right;">Page 18</p> <p>1 job; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Have you disclosed the work you're</p> <p>4 doing in this litigation pursuant to that policy?</p> <p>5 A. I've disclosed everything that's</p> <p>6 required to be disclosed and received any approval</p> <p>7 that was required to be received.</p> <p>8 Q. As it relates to this case, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have to prepare a written</p> <p>11 report disclosing your work on this case?</p> <p>12 A. Only in the most general terms.</p> <p>13 Q. But you actually prepared a report</p> <p>14 and submitted it to someone?</p> <p>15 A. I filled out an online form.</p> <p>16 Q. Do you have a copy of that online</p> <p>17 form?</p> <p>18 A. No.</p> <p>19 Q. Did you have to get approval to do</p> <p>20 this work?</p> <p>21 A. I did have to get approval to do</p> <p>22 this work.</p> <p>23 Q. Who did you have to get approval</p> <p>24 from?</p>	<p style="text-align: right;">Page 20</p> <p>1 this, including when I'm teaching professional</p> <p>2 responsibility classes.</p> <p>3 The way that the University of Texas</p> <p>4 system currently works, they have centralized the</p> <p>5 approval of outside activities that would</p> <p>6 constitute conflict of commitment; in other words,</p> <p>7 that might take time away from one's teaching</p> <p>8 obligations to the university. They centralized</p> <p>9 those at the University of Texas system level.</p> <p>10 The University of Texas is comprised of several</p> <p>11 campuses.</p> <p>12 That particular form asked me a</p> <p>13 number of questions which I filled in on the form</p> <p>14 and asked me to identify the person who would</p> <p>15 grant approval. I designated the vice dean at the</p> <p>16 law school because he's the person I would expect</p> <p>17 to grant approval.</p> <p>18 Nothing happened for a while. I</p> <p>19 reached out to him. He investigated, found that</p> <p>20 he could grant approval, granted approval, told me</p> <p>21 he had granted approval, and the next time I</p> <p>22 checked the website approval had been granted.</p> <p>23 Q. Okay. What is his name?</p> <p>24 A. Robert Chesney.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. I had to get approval from whoever</p> <p>2 was the designated individual to grant approval.</p> <p>3 I identified the vice dean at the University of</p> <p>4 Texas Law School, who granted approval.</p> <p>5 Q. What -- in what form was the</p> <p>6 approval granted?</p> <p>7 A. A click on a website.</p> <p>8 Q. Click on a website to see if it says</p> <p>9 granted?</p> <p>10 In other words, how was it done?</p> <p>11 Was it done by an e-mail or was it done by a phone</p> <p>12 call? Was it done by an in-person sign-off?</p> <p>13 A. Would you like me to outline the</p> <p>14 process as best as I can recall it?</p> <p>15 Q. All I'm really looking for is: In</p> <p>16 what form did you get the approval?</p> <p>17 A. I submitted the form. There are --</p> <p>18 there are independent requirements at the</p> <p>19 University of Texas and, as you probably know,</p> <p>20 this is an area that's in flux at many</p> <p>21 universities.</p> <p>22 I also have a significant academic</p> <p>23 expertise in conflict of interest and conflict of</p> <p>24 commitment policy. So I pay attention to all of</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Have you otherwise advised anyone at</p> <p>2 the University of Texas of your work on this case?</p> <p>3 A. No.</p> <p>4 Q. What courses are you teaching, if</p> <p>5 any, this summer -- this semester?</p> <p>6 A. So this semester I'm a visiting</p> <p>7 professor here in Washington, DC at the George</p> <p>8 Washington University Law School, and I'm teaching</p> <p>9 -- that is a standard turnkey operation where the</p> <p>10 University of Texas remains my employer. I am</p> <p>11 only paid by them, and they have a separate</p> <p>12 agreement in a standard fashion for visiting</p> <p>13 professorships with the institution that is</p> <p>14 hosting the semester.</p> <p>15 And at GW, I'm teaching a</p> <p>16 three-credit legislation and regulation course,</p> <p>17 which is my standard regulatory theory and</p> <p>18 regulatory design class, and I'm teaching a</p> <p>19 for-credit health law and policy survey class.</p> <p>20 Q. Have you taught classes either as a</p> <p>21 visiting professor or at the University of Texas</p> <p>22 ever since you started at Texas? In other words,</p> <p>23 have you taught classes every semester either at</p> <p>24 Texas or somewhere else since you started?</p>



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<p>1 A. No. I have occasionally had a                  2 research semester, or I've had additional teaching                  3 credit, or I've had an eminent scholar fellowship                  4 that would relieve me of teaching. But I really                  5 like to teach, so I usually teach the equivalent                  6 of a full load every year.</p> <p>7 Q. Did you teach classes every semester                  8 while at Columbia?</p> <p>9 A. Columbia, unlike the University of                  10 Texas, has a structured sabbatical program. So                  11 not when I had a formal sabbatical, and I believe                  12 also not when I had large research grants that the                  13 law school based relief of teaching on. But, in                  14 general, I teach every semester and, in general, I                  15 teach a full or an overload. I'm teaching an                  16 overload this semester.</p> <p>17 Q. Since 2001, have you been a                  18 full-time law school professor?</p> <p>19 A. Since 1995, I've been a full-time                  20 law school professor.</p> <p>21 Q. 1995.                  22 And the courses you have taught                  23 since 1995 have all been in a law school, correct?</p> <p>24 A. I am interdisciplinary by training.</p>	<p>1 courses. I may be teaching them about advocacy.                  2 I'm often teaching them about professional                  3 responsibility. I teach my professional ethics                  4 classes from a comparative professions perspective                  5 and do a lot of law/medicine comparisons and                  6 occasionally other professions also.</p> <p>7 Q. But you're not teaching the practice                  8 of medicine, correct?</p> <p>9 A. I'm not teaching clinical medicine,                  10 no.</p> <p>11 Q. And you've never taught clinical                  12 medicine to gynecologic oncologists, correct?</p> <p>13 A. No.</p> <p>14 Q. You have not taught clinical                  15 medicine to oncologists, correct?</p> <p>16 A. I have not taught clinical medicine.                  17 You can ask -- you can subdivide that all you                  18 want. I have not taught clinical medicine.</p> <p>19 Q. You don't teach epidemiology,                  20 correct?</p> <p>21 A. I teach -- I use epidemiological                  22 materials in a fair amount of my regulatory                  23 teaching. I mean, we consider all sorts of                  24 preventive screens and tests. We do a lot of</p>
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<p>1 I am dually tenured in both the law school and                  2 medical school at University of Texas. My last --                  3 before GW, my last visiting professorship at NYU,                  4 I had a visiting professor appointment both in law                  5 school and at NYU School of Medicine.</p> <p>6 And virtually all of the classes I                  7 teach at my home institution are cross-listed in                  8 business and public affairs and in the medical                  9 schools, and I typically design my courses to                  10 attract enrollment from many different schools.</p> <p>11 Q. So in your career as a professor,                  12 you have taught medical students?</p> <p>13 A. Indeed, many times.</p> <p>14 Q. When is the last time you had a                  15 course in which you taught medical students?</p> <p>16 A. Last spring I taught my health, law,                  17 and policy class at Texas and had over a dozen                  18 third-year medical students enrolled, which an                  19 entering class of 50 is a significant number of                  20 the medical school class. So I'm actually very                  21 proud of how many medical students I teach.</p> <p>22 Q. When you teach medical students,                  23 you're teaching them law-related courses, correct?</p> <p>24 A. I'm teaching them policy-related</p>	<p>1 basic epidemiological calculations. I do have                  2 public health students in my classes from time to                  3 time, but, no, I've never taught a course in                  4 epidemiology.</p> <p>5 Q. You don't teach courses in                  6 toxicology, correct?</p> <p>7 A. No, I don't.</p> <p>8 Q. Have you ever taught any courses on                  9 FDA's cosmetic regulations?</p> <p>10 A. I teach FDA-related issues                  11 constantly, including within the last week. I've                  12 never used a cosmetic regulatory example in my                  13 teaching.</p> <p>14 Q. Have you ever taught courses on the                  15 manufacturing of cosmetics?</p> <p>16 A. Have I ever taught courses on the                  17 manufacturing of cosmetics? No.</p> <p>18 Q. Have you ever taught courses on the                  19 marketing of cosmetics?</p> <p>20 A. I have taught -- I've -- when you                  21 say "course," do you mean an entire semester                  22 course or do you mean a class session or part of a                  23 class session?</p> <p>24 Q. Well, have you ever -- let me ask it</p>



<p style="text-align: right;">Page 26</p> <p>1 a different way.</p> <p>2 Have you ever taught about the</p> <p>3 marketing of cosmetics specifically as to</p> <p>4 cosmetics?</p> <p>5 A. Again, I've taught about the</p> <p>6 marketing of drugs. I've taught about the</p> <p>7 marketing of many things. I don't believe I've</p> <p>8 ever taught specifically about the marketing of</p> <p>9 cosmetics.</p> <p>10 Q. Have you ever taught specifically</p> <p>11 about the labeling of cosmetics?</p> <p>12 A. No. Again, with the caveat that I</p> <p>13 teach about labeling and information disclosure</p> <p>14 all the time.</p> <p>15 Q. Have you ever taught any courses</p> <p>16 about the testing of cosmetics?</p> <p>17 A. No.</p> <p>18 Q. Have you ever taught a course on</p> <p>19 Canadian cosmetic regulatory law?</p> <p>20 A. No.</p> <p>21 Q. Have you ever taught courses on FDA</p> <p>22 regulations as they relate to drugs, medical</p> <p>23 devices, or over-the-counter medications?</p> <p>24 A. I've taught many class sessions that</p>	<p style="text-align: right;">Page 28</p> <p>1 In terms of my statement in</p> <p>2 paragraph 7 of my report, I was trying to</p> <p>3 lay out the general expertise that would</p> <p>4 relate to the specific topics in the</p> <p>5 report.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. Tell me when you first read the FDA</p> <p>8 cosmetic statutes and regulations that you cite in</p> <p>9 your report.</p> <p>10 A. The cosmetic-specific regulations I</p> <p>11 first read as I was deciding whether I would</p> <p>12 accept the invitation to serve as an expert</p> <p>13 witness. The underlying pillars of FDA</p> <p>14 regulations regarding, say, adulteration and</p> <p>15 misbranding, which are applicable to cosmetics,</p> <p>16 the general history of the Pure Food and Drug Act,</p> <p>17 of the Food, Drug, and Cosmetic Act of 1938, I</p> <p>18 have been teaching this my entire career and have</p> <p>19 read them many times.</p> <p>20 Q. But prior to being contacted as</p> <p>21 potentially serving as expert witness in this</p> <p>22 case, you had never read the cosmetic statutes and</p> <p>23 regulations that you cite in your report, correct?</p> <p>24 DR. THOMPSON: Object to form.</p>
<p style="text-align: right;">Page 27</p> <p>1 involve those issues. I've never taught a</p> <p>2 semester-long FDA law class.</p> <p>3 Q. There is a course at University of</p> <p>4 Texas called "Food Safety Law" that gets into FDA</p> <p>5 regulations.</p> <p>6 You've never taught that class, have</p> <p>7 you?</p> <p>8 A. I have not taught that.</p> <p>9 Q. In paragraph 7 of your report, you</p> <p>10 say that your expertise is in the science of</p> <p>11 policy-making, including the science of regulatory</p> <p>12 design.</p> <p>13 You go on to say that you are an</p> <p>14 expert in government-supervised health and</p> <p>15 financial self-regulations, corporate compliance</p> <p>16 and corporate governance, and the regulations of</p> <p>17 self-governing professions.</p> <p>18 Nowhere in your report do you list</p> <p>19 any expertise in FDA cosmetic regulations,</p> <p>20 correct?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: I think a lot</p> <p>23 of my report is certain proceedings and</p> <p>24 FDA cosmetic regulations.</p>	<p style="text-align: right;">Page 29</p> <p>1 THE WITNESS: Again, I had</p> <p>2 read the general statutes because the</p> <p>3 general statutes are applicable beyond</p> <p>4 cosmetics. I had not read the CFR</p> <p>5 entries for cosmetics.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. So in particular, prior to being</p> <p>8 contacted by plaintiffs' lawyers in this case, you</p> <p>9 had never read 21 CFR 740.1, correct?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: So, again, I'm</p> <p>12 just going to take the liberty of -- of</p> <p>13 when we're doing code sections, even</p> <p>14 though I'm pretty sure I know which ones</p> <p>15 you're referring to or CFR sections, I'm</p> <p>16 just going to have them around so that I</p> <p>17 can -- I can --</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Sure.</p> <p>20 A. -- make sure I answer you</p> <p>21 accurately.</p> <p>22 So you were regarding --</p> <p>23 Q. Yes.</p> <p>24 A. -- the warning statements on</p>

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1 cosmetics specifically? No, I had not read that  
 2 section prior to considering these issues.  
 3 Q. You're not an expert in FDA cosmetic  
 4 regulations. True?  
 5 A. I --  
 6 DR. THOMPSON: Object to form.  
 7 THE WITNESS: I consider  
 8 myself an expert in cosmetic regulations.  
 9 It's a short number of regulations that  
 10 fit in a larger scheme that I have great  
 11 familiarity with.  
 12 BY MR. HEGARTY:  
 13 Q. Would you have called yourself an  
 14 expert in FDA cosmetic regulations prior to being  
 15 contacted by the plaintiffs' counsel in this case?  
 16 DR. THOMPSON: Object to form.  
 17 THE WITNESS: I'm not sure I  
 18 know the answer to that. It would have  
 19 depend on the context I was being asked  
 20 the question.  
 21 I wouldn't have asserted that  
 22 as a focused expertise, but I would have  
 23 understood that a small amount of -- of  
 24 intense research would be sufficient to

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1 connect what was specific to cosmetic  
 2 regulation to my general food, drug, and  
 3 cosmetic expertise. So probably I would  
 4 have.  
 5 BY MR. HEGARTY:  
 6 Q. Even though you had never read the  
 7 cosmetic regulations, correct?  
 8 DR. THOMPSON: Object to form.  
 9 THE WITNESS: (Laugh). Yes.  
 10 BY MR. HEGARTY:  
 11 Q. Okay. Fair enough.  
 12 Tell me -- well, strike. Let me  
 13 back up.  
 14 Have you had any formal training,  
 15 formal courses on FDA cosmetic regulations and  
 16 practices?  
 17 A. I have not taken any formal courses  
 18 on cosmetic regulation. I have taken -- I have  
 19 attended many talks and read many papers and  
 20 attended conferences involving FDA issues overall  
 21 several times.  
 22 Q. Focusing specifically on cosmetic  
 23 regulations, can you cite for me all the work you  
 24 have done concerning cosmetic regulations before

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1 being hired to work on this case?  
 2 DR. THOMPSON: Object to form.  
 3 THE WITNESS: I have not done  
 4 specific work on cosmetic regulations  
 5 prior to my involvement with these  
 6 issues.  
 7 BY MR. HEGARTY:  
 8 Q. Had you ever heard the term  
 9 "asbestiform" before being hired in this case?  
 10 DR. THOMPSON: Object to form.  
 11 THE WITNESS: I have an  
 12 undergraduate degree in biochemistry that  
 13 included a couple of geology classes. So  
 14 chances are, yes, but I don't recall.  
 15 BY MR. HEGARTY:  
 16 Q. Had you ever heard the term  
 17 non-asbestiform before being hired?  
 18 A. Same answer.  
 19 DR. THOMPSON: Object to form.  
 20 BY MR. HEGARTY:  
 21 Q. Had you ever heard the term  
 22 "elongated mineral particles" before being hired  
 23 in this case?  
 24 DR. THOMPSON: Object to form.

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1 THE WITNESS: Elongated  
 2 mineral particles was an interesting  
 3 acronym. My impression is it's  
 4 relatively new. So I don't believe I had  
 5 ever heard that before.  
 6 BY MR. HEGARTY:  
 7 Q. Had you ever heard the phrase  
 8 "fibrous talc" before being hired in this case?  
 9 DR. THOMPSON: Object to form.  
 10 THE WITNESS: Again, I don't  
 11 know.  
 12 BY MR. HEGARTY:  
 13 Q. Have you ever been designated as an  
 14 expert witness in any lawsuit before this one?  
 15 A. As we were discussing earlier, I  
 16 served as a named expert, but did not ultimately  
 17 testify in a hospital antitrust suit involving two  
 18 private hospitals in Illinois and the Federal  
 19 Trade Commission, roughly, 10 years ago, maybe 12.  
 20 Q. Any time other than that instance  
 21 that you are aware of you've been actually  
 22 designated or identified as an expert witness in a  
 23 lawsuit?  
 24 A. No.

<p style="text-align: right;">Page 34</p> <p>1 Q. You received both a law and medical                  2 degrees -- or let me rephrase that.                  3 You received both law and medical                  4 degrees at Stanford, correct?                  5 A. Correct.                  6 Q. Which one did you complete first?                  7 A. (Laugh). There are many ways to                  8 answer that question.                  9 I entered medical school first. I                  10 entered law school near the end of my third year                  11 of medical school. I integrated the two programs,                  12 and I received both degrees the same day.                  13 Q. After one year of residency in                  14 anesthesiology, you went to work at a law firm in                  15 Los Angeles; is that correct?                  16 A. Not -- not exactly. I did -- I                  17 completed an internship year in what's called the                  18 transitional year Internship in San Diego, which                  19 would have been the first year of a four-year                  20 anesthesia residency. I then completed the second                  21 year of that residency at Johns Hopkins, you know,                  22 in the normal course, and having completed that                  23 year, I then moved back to California and became                  24 an associate at a law firm.</p>	<p style="text-align: right;">Page 36</p> <p>1 related to public finance, securities, mergers and                  2 acquisitions?                  3 A. Yes.                  4 Q. You were an associate at O'Melveny                  5 for four years before leaving to become a law                  6 professor?                  7 A. I was an associate for -- an                  8 associate from October of 1990 until January of                  9 1993, when I resigned in order to work in the                  10 White House on that era of Clinton Administration                  11 health reform. And then the following September,                  12 perhaps October, I rejoined O'Melveny on a half                  13 time basis and I worked there until I became a law                  14 professor in 1995.                  15 Q. Are you aware that O'Melveny                  16 represents Johnson &amp; Johnson?                  17 A. I am. John Beisner was someone I                  18 knew slightly when I worked in the DC office on                  19 Supreme Court litigation during my otherwise                  20 corporate practice years.                  21 Q. So you did work with lawyers                  22 representing Johnson &amp; Johnson?                  23 DR. THOMPSON: Object to form.                  24 THE WITNESS: No. I knew</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Why did you stop practicing                  2 medicine?                  3 A. My -- my intent was to acquire                  4 practice experience in each profession and to go                  5 back and forth between the two until I had a good                  6 grounding in both.                  7 Q. When is the last time you treated a                  8 patient?                  9 A. I have an active Texas medical                  10 license. I do not maintain a clinical practice.                  11 I do my best to keep my clinical skills up, but I                  12 don't treat patients. So the last time I treated                  13 a patient in a formal sense was during my second                  14 year of postgraduate training so as an anesthesia                  15 resident at Johns Hopkins.                  16 Q. What year was that?                  17 A. That would have been 1990.                  18 Q. You went to work at O'Melveny in Los                  19 Angeles, correct?                  20 A. Correct.                  21 Q. And you were an associate in the                  22 corporate group; is that right?                  23 A. Yes.                  24 Q. And your CV says you worked on cases</p>	<p style="text-align: right;">Page 37</p> <p>1 that John Beisner was in the office and                  2 said hi to him a few times.                  3 BY MR. HEGARTY:                  4 Q. Did you ever work on any matters                  5 involving Johnson &amp; Johnson?                  6 A. No.                  7 Q. What percentage of your working time                  8 this year has been spent on litigation matters?                  9 A. Would you rephrase that?                  10 Q. Sure.                  11 A. Sorry.                  12 Q. Are you working on any litigation                  13 matters as an expert witness besides the one we're                  14 here to talk about today?                  15 A. No.                  16 Q. How much time have you spent -- I                  17 guess, let me back up.                  18 The time you've spent working on                  19 this case has been in 2021, correct?                  20 A. Correct.                  21 Q. And it's been the time we talked                  22 about in the invoice, plus the other time you                  23 billed since that time; is that right?                  24 A. Correct.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q. Did you earn any fees as an expert              2 witness in 2020?              3 A. No.              4 Q. How about 2019?              5 A. No.              6 Q. Before this case, have you ever been              7 designated as an expert to testify about              8 cosmetics?              9 A. No.              10 Q. Before this case, have you ever been              11 designated as an expert to testify about cosmetic              12 regulations?              13 A. No.              14 Q. Have you ever been designated as an              15 expert to talk about pharmaceutical, medical              16 device, or over-the-counter regulations?              17 A. No, but I don't do much expert              18 witness work.              19 Q. Is this the only legal case you're              20 currently consulting on?              21 A. Yes.              22 Q. How many times have you given a              23 deposition?              24 A. Only -- only once.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Have you ever been hired by a              2 company to consult with regard to a prescription              3 drug?              4 A. No.              5 May I just ask. When you say "hired              6 by a company," I haven't, to my knowledge, been              7 hired by anybody for these purposes. But when you              8 say "a company," do you mean by, I mean, as              9 opposed to a law firm or do you mean just all              10 others?              11 Q. Yes, it would be a company.              12 My question would be: Have you ever              13 been hired by a company who would -- who makes the              14 product --              15 A. Okay.              16 Q. -- the product I'm talking about, to              17 consult with regard to that particular product,              18 and my last question was a prescription drug?              19 A. I understand now.              20 Q. Have you ever been hired by a              21 company to consult with regard to a medical device              22 they are manufacturing?              23 A. No.              24 Q. Have you ever been hired by a</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. When was that?              2 A. That was, roughly, 10 years ago in              3 the antitrust litigation I mentioned. An              4 excellent assistant section chief from the FTC              5 took my deposition in Austin, Texas on that case.              6 Q. Who were the hospitals involved?              7 A. It was two hospitals in Rockford,              8 and they have changed their names enough so that              9 I, frankly, can't remember. I would have to look              10 at something to refresh my recollection.              11 Q. Okay. Have you ever taken a              12 deposition as a lawyer?              13 A. No.              14 Q. Have you ever testified in court?              15 A. I've -- I've never testified as a              16 witness in court. I've served on juries and have              17 voir dire.              18 Q. Have you ever been hired by a              19 company to consult with regard to a cosmetic              20 ingredient?              21 A. No.              22 Q. Have you ever been hired by a              23 company to consult regarding a cosmetic product?              24 A. No.</p>	<p style="text-align: right;">Page 41</p> <p>1 company to consult with regard to an              2 over-the-counter product that they are              3 manufacturing?              4 A. No.              5 Qualification, though I would not be              6 able to remember the details, is I provide              7 informal advice many times to people unpaid with              8 no documentation, often my own students, sometimes              9 students elsewhere in the university who are doing              10 collaborative startup work. And they have              11 something that they are interested in and has a              12 health policy, health reimbursement, health law              13 type connection, and they reach out, and I am very              14 generous with my -- my unpaid time.              15 So it's quite possible that              16 something meeting these descriptions happened              17 during those contacts over the years.              18 Q. Have you ever consulted with a              19 consumer product company on any issue?              20 DR. THOMPSON: Object to form.              21 THE WITNESS: Have I ever              22 consulted. Again, for hire? No.              23 BY MR. HEGARTY:              24 Q. Has any cosmetic, pharmaceutical,</p>

<p style="text-align: right;">Page 42</p> <p>1 company or over-the-counter company ever hired you</p> <p>2 as a consultant for any issue?</p> <p>3 A. Would you repeat that question?</p> <p>4 Q. Sure.</p> <p>5 Has any cosmetic, pharmaceutical, or</p> <p>6 over-the-counter product company ever hired you to</p> <p>7 assist them with anything?</p> <p>8 A. Again, not for hire. Not for hire.</p> <p>9 I have a wide circle of acquaintance. I do</p> <p>10 speaking for many organizations, including</p> <p>11 conferences that may have been funded by</p> <p>12 pharmaceutical companies over the years, but</p> <p>13 nobody has hired me individually for consulting</p> <p>14 advice.</p> <p>15 Q. Have you ever been -- strike that.</p> <p>16 So you have never been employed by a</p> <p>17 pharmaceutical, medical device, or consumer</p> <p>18 product company, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You've never worked for Johnson &amp;</p> <p>21 Johnson, correct?</p> <p>22 A. No.</p> <p>23 Q. You've never worked for any Johnson</p> <p>24 &amp; Johnson company, right?</p>	<p style="text-align: right;">Page 44</p> <p>1 practice that would be relevant to</p> <p>2 cosmetic companies.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. You have no personal experience on</p> <p>5 working within a cosmetic company?</p> <p>6 A. Correct.</p> <p>7 Q. Have you ever assisted a company in</p> <p>8 developing a cosmetic?</p> <p>9 A. No.</p> <p>10 Q. Have you ever assisted a company in</p> <p>11 testing a cosmetic?</p> <p>12 A. No.</p> <p>13 Q. Have you ever assisted a company in</p> <p>14 manufacturing a cosmetic product?</p> <p>15 A. No.</p> <p>16 Q. Have you ever assisted a company in</p> <p>17 marketing a cosmetic?</p> <p>18 A. Personally, no. My mom was involved</p> <p>19 in some cosmetic advertising decades ago.</p> <p>20 Q. Have you ever been involved in a</p> <p>21 company's analysis of safety data regarding a</p> <p>22 cosmetic?</p> <p>23 A. No.</p> <p>24 Q. Have you ever advised a company</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I have had a lot of contact over the</p> <p>2 years with the Robert Wood Johnson Foundation, and</p> <p>3 I've been a recipient of at least one of their</p> <p>4 grants, but I have not -- I haven't been hired by</p> <p>5 a corporate entity having anything to do with</p> <p>6 Johnson &amp; Johnson.</p> <p>7 Q. Does Johnson &amp; Johnson still --</p> <p>8 strike that.</p> <p>9 Does Johnson &amp; Johnson still sell</p> <p>10 Shower to Shower?</p> <p>11 A. I don't know.</p> <p>12 Q. You are not an expert in how a</p> <p>13 cosmetic company operates, correct?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I am an expert</p> <p>16 in how a lot of companies operate. What</p> <p>17 is particular to a cosmetic company I</p> <p>18 couldn't say, but I have corporate law</p> <p>19 practice experience. I have corporate</p> <p>20 law teaching experience. I have</p> <p>21 securities law teaching experience.</p> <p>22 And my mother spent her career</p> <p>23 doing fashion advertising. So I suspect</p> <p>24 I know a fair amount about corporate</p>	<p style="text-align: right;">Page 45</p> <p>1 about the testing needed to show the safety of a</p> <p>2 cosmetic?</p> <p>3 A. No.</p> <p>4 Q. Have you ever assisted a company in</p> <p>5 communicating with the FDA about a cosmetic?</p> <p>6 A. No.</p> <p>7 Q. Have you ever drafted a warning for</p> <p>8 a cosmetic?</p> <p>9 A. No.</p> <p>10 Q. Have you ever -- have you ever</p> <p>11 advised a cosmetic company about the need for a</p> <p>12 warning on a cosmetic?</p> <p>13 A. No.</p> <p>14 Q. Have you ever worked with a company</p> <p>15 on developing a warning for a cosmetic?</p> <p>16 A. No.</p> <p>17 Q. Have you ever drafted -- strike</p> <p>18 that. I asked you that.</p> <p>19 Have you ever communicated with a</p> <p>20 company about the cosmetic regulations?</p> <p>21 A. No.</p> <p>22 Q. Have you ever been employed by a</p> <p>23 company in any capacity?</p> <p>24 DR. THOMPSON: Object to form.</p>



<p style="text-align: right;">Page 46</p> <p>1 THE WITNESS: I'm not exactly</p> <p>2 sure what you're asking, I mean.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. It's as broad as it can be.</p> <p>5 Have you ever worked for a company?</p> <p>6 A. I mean, a law firm is a -- is a</p> <p>7 company. So yes. (Laugh).</p> <p>8 Q. Have you ever worked for a company</p> <p>9 outside of O'Melveny?</p> <p>10 A. I worked -- I was a summer associate</p> <p>11 at Davis Polk and Wardwell. (Laugh).</p> <p>12 Q. Fair enough.</p> <p>13 You've never worked for FDA,</p> <p>14 correct?</p> <p>15 A. Correct. Oh, and, again, not a</p> <p>16 company, but I -- I was a full-time federal</p> <p>17 employee briefly in 1993 with the White House.</p> <p>18 Q. But you never worked for FDA,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Have you ever worked for a</p> <p>22 governmental agency?</p> <p>23 A. Again I worked --</p> <p>24 DR. THOMPSON: Object to form.</p>	<p style="text-align: right;">Page 48</p> <p>1 administrative agency, correct.</p> <p>2 Q. You've never communicated with</p> <p>3 anyone at FDA regarding a cosmetic, correct?</p> <p>4 A. Correct.</p> <p>5 Q. You've never served on any FDA</p> <p>6 committees, correct?</p> <p>7 A. Ever served on an FDA committee.</p> <p>8 Correct.</p> <p>9 Q. FDA has never contacted you about a</p> <p>10 cosmetic, correct?</p> <p>11 A. Correct.</p> <p>12 Q. You've never worked with Health</p> <p>13 Canada, correct?</p> <p>14 A. Correct.</p> <p>15 Q. You've never worked with any foreign</p> <p>16 regulatory agency, correct?</p> <p>17 A. It's a good question.</p> <p>18 I have been an invited speaker and</p> <p>19 conference participant in, you know, several</p> <p>20 countries that involved health policy agencies,</p> <p>21 health insurance agencies. I have had many</p> <p>22 discussions over the years. I haven't worked on</p> <p>23 discrete projects with them in a sustained way.</p> <p>24 Q. You're not an expert in Canadian</p>
<p style="text-align: right;">Page 47</p> <p>1 THE WITNESS: I worked in the</p> <p>2 White House in 1993 as a full-time</p> <p>3 employee and, you know, with a clearance</p> <p>4 and with a lot of connections with the</p> <p>5 federal government.</p> <p>6 I work extensively with state</p> <p>7 governments on various issues from time</p> <p>8 to time. I provide informal advice to</p> <p>9 people in federal health agencies, in</p> <p>10 self-regulatory organizations. It's what</p> <p>11 I do. I mean, this is a career of this.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Understood. Let me ask it a</p> <p>14 different way.</p> <p>15 You've never been employed by a</p> <p>16 governmental agency, correct?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: Other than the</p> <p>19 White House, no.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. But you know government being the</p> <p>22 job you had at the White House was not with an</p> <p>23 agency, right?</p> <p>24 A. It was not with a federal</p>	<p style="text-align: right;">Page 49</p> <p>1 cosmetic regulations, correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Correct.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. You've never communicated directly</p> <p>6 with Health Canada, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You cannot cite to me a single</p> <p>9 cosmetic -- you cannot cite to me a single</p> <p>10 Canadian cosmetic regulation, can you?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: Can I cite?</p> <p>13 No. But my habit is always to look</p> <p>14 things up. So I don't cite very much.</p> <p>15 Have I now read a little about Canadian</p> <p>16 cosmetic regulation? Yes, but I don't --</p> <p>17 I don't know chapter and verse.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Have you ever read the Canadian</p> <p>20 cosmetic regulations?</p> <p>21 A. No.</p> <p>22 Q. Have you ever referenced in any</p> <p>23 publication of yours a Canadian regulation</p> <p>24 regarding cosmetics?</p>



<p style="text-align: right;">Page 50</p> <p>1 A. Regarding cosmetics? No.</p> <p>2 Q. Have you ever referenced in any</p> <p>3 publication of yours a finding by Health Canada?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: I don't believe</p> <p>6 so.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Do you claim to be an expert in</p> <p>9 Health Canada's risk assessment process?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: I have read</p> <p>12 their weight of evidence documents, which</p> <p>13 are compatible with documents elsewhere,</p> <p>14 and I've worked on harmonization efforts</p> <p>15 involving drug approval regulations</p> <p>16 involving many countries, including the</p> <p>17 Canadian system, but I don't know what</p> <p>18 more than that I could -- I could offer.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Well, with regard to the Canadian</p> <p>21 risk assessment process, the only document you've</p> <p>22 read about that is the 2001 Canadian FSAR,</p> <p>23 correct?</p> <p>24 DR. THOMPSON: Object to form.</p>	<p style="text-align: right;">Page 52</p> <p>1 FSAR for talc, correct?</p> <p>2 A. Again, I am not great with acronyms.</p> <p>3 If you want to show me?</p> <p>4 Q. Sure.</p> <p>5 A. It may be in my binder, but I just</p> <p>6 want to make sure I'm looking at the right thing.</p> <p>7 MR. HEGARTY: I'll show you a</p> <p>8 copy of it, and I'll mark as an exhibit.</p> <p>9 (Document marked for</p> <p>10 identification as Sage Exhibit 2.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. I'm marking as Exhibit No. 2 the</p> <p>13 screening assessment by --</p> <p>14 A. Yeah.</p> <p>15 Q. -- Health Canada for talc that's</p> <p>16 dated April 21 -- April 2021.</p> <p>17 And you have read this document,</p> <p>18 correct?</p> <p>19 A. Yes, I have -- I have reviewed this</p> <p>20 document, which means reading much of it. Did I</p> <p>21 read every word? Probably not.</p> <p>22 Q. And you mentioned before that you</p> <p>23 had not read it prior to being contacted by</p> <p>24 counsel for plaintiffs in this case?</p>
<p style="text-align: right;">Page 51</p> <p>1 THE WITNESS: I would have to</p> <p>2 look at what exactly the document you --</p> <p>3 I've read -- I thought it was a</p> <p>4 considerably more recent document on</p> <p>5 weight of evidence explaining how they do</p> <p>6 their risk assessment, what evidence, you</p> <p>7 know, is -- is incorporated, what might</p> <p>8 not be.</p> <p>9 I'm familiar with risk</p> <p>10 assessment documents for many contexts,</p> <p>11 whether European precautionary principle</p> <p>12 documents or, you know, U.S.</p> <p>13 cost-effectiveness, cost-benefit</p> <p>14 executive order type economic analysis</p> <p>15 regulation documents. I don't know the</p> <p>16 ins and outs of them. I have a good</p> <p>17 familiarity with how the system works.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Have you read anything about Health</p> <p>20 Canada's risk assessment as it relates to talc</p> <p>21 before being contacted by plaintiffs' counsel in</p> <p>22 this case?</p> <p>23 A. No.</p> <p>24 Q. And you have read the Health Canada</p>	<p style="text-align: right;">Page 53</p> <p>1 A. That's correct.</p> <p>2 Q. Do you know who wrote this document?</p> <p>3 A. No.</p> <p>4 Q. Do you know who was involved in</p> <p>5 analyzing the data in putting this document</p> <p>6 together?</p> <p>7 A. As individuals, no. I would assume</p> <p>8 that Health Canada is at governmental level</p> <p>9 responsible for the assessments they issue.</p> <p>10 Q. Do you know the expertise of anyone</p> <p>11 involved in putting Exhibit No. 2 together?</p> <p>12 A. I can make inferences, but, no.</p> <p>13 Q. Did you submit any material as part</p> <p>14 of this Health Canada process that led to Exhibit</p> <p>15 No. 2?</p> <p>16 A. No.</p> <p>17 Q. Did you or have you communicated</p> <p>18 with Health Canada regarding this assessment?</p> <p>19 A. No.</p> <p>20 Q. Did you know Health Canada was even</p> <p>21 doing an assessment about talc prior to being</p> <p>22 contacted by plaintiffs' counsel in this case?</p> <p>23 A. No.</p> <p>24 Q. Do you recall from reading Exhibit</p>

<p style="text-align: right;">Page 54</p> <p>1 No. 2 that it references as part of its reliance                  2 materials expert reports from U.S. litigation?                  3 A. I don't recall anything about the                  4 references in this report.                  5 Q. Well, if you turn to, for example,                  6 page 55 of this report that we marked as Exhibit                  7 No. 2 --                  8 A. Uh-huh.                  9 Q. -- and four lines up from the bottom                  10 of that page, there's a reference -- let me --                  11 that's not the right one. I'll find the one I                  12 want to reference you to.                  13 Okay. If you go to page 62. I'm                  14 sorry. Two lines up from the bottom, there's a                  15 reference to a Rule 26 expert report of Judith                  16 Wolf from 2018.                  17 Do you see that?                  18 A. I do.                  19 Q. Had you noted that before I pointed                  20 that out to you right now?                  21 A. No.                  22 The one you referenced earlier on                  23 page 55, the McTiernan, reminded me that I did                  24 review Congressional testimony as part of learning</p>	<p style="text-align: right;">Page 56</p> <p>1 plaintiff experts?                  2 A. I didn't know that but --                  3 Q. Okay.                  4 A. -- I'll take your word for it.                  5 Q. Can you cite for me any time FDA has                  6 cited to litigation expert reports in publishing a                  7 safety finding?                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: That is exactly                  10 the sort of question I would research                  11 before offering a view on.                  12 BY MR. HEGARTY:                  13 Q. Do you know if Health Canada has                  14 ever in any safety assessment cited expert reports                  15 from U.S. litigation?                  16 DR. THOMPSON: Object to form.                  17 THE WITNESS: I'm not aware                  18 of that, but this is the research                  19 process. I don't give casual reads on                  20 complicated facts. I look things up.                  21 BY MR. HEGARTY:                  22 Q. In any published article of yours,                  23 have you ever cited an expert report from a                  24 litigation?</p>
<p style="text-align: right;">Page 55</p> <p>1 about these issues --                  2 Q. Okay.                  3 A. -- and formulating my opinions.                  4 Q. And if you go over to page 59, do                  5 you see about five lines down from the top and                  6 about another five lines down, there's a reference                  7 to an expert report by Jack Siemiatycki and a                  8 reference to an expert report by Rebecca                  9 Smith-Bindman?                  10 Do you see that?                  11 A. Yes.                  12 Q. Do you see that those reports are in                  13 the same case in which your expert report was                  14 filed, the United States District Court for the                  15 District of New Jersey MDL?                  16 A. Yes. I also see one in between the                  17 two. Actually, I see a couple including those                  18 there.                  19 Q. Yes.                  20 Dr. Singh. You see that?                  21 A. Yes.                  22 Q. And a Dr. Ellen Blair Smith?                  23 A. Yes.                  24 Q. You understand that those are all</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Not to my -- not to my knowledge,                  2 but it's possible.                  3 Q. Do you -- don't you find it unusual                  4 that a governmental agency would cite to a                  5 litigation report as part of its reliance                  6 material?                  7 A. I don't find --                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: I don't find it                  10 in the least unusual. One takes                  11 information where one gets it. One                  12 weighs its importance, its reliability.                  13 If I were -- if I were                  14 advising a risk assessment body, I would                  15 not put blanket exclusions on what it                  16 considers.                  17 BY MR. HEGARTY:                  18 Q. You're familiar with IARC?                  19 A. Briefly, yes.                  20 Q. Okay. Did you have any awareness of                  21 IARC prior to being contacted by plaintiffs'                  22 counsel in this case?                  23 A. I'd seen --                  24 DR. THOMPSON: Object to form.</p>

<p style="text-align: right;">Page 58</p> <p>1 THE WITNESS: I had seen the                  2 acronym. I knew there was such a body.                  3 I hadn't read any of their specific                  4 assessments.                  5 MR. HEGARTY: Mark as Exhibit                  6 No. 3 a copy of the curriculum vitae of                  7 yours that we were provided in this                  8 litigation.                  9 (Document marked for                  10 identification as Sage Exhibit 3.)                  11 BY MR. HEGARTY:                  12 Q. Would you look at that document and                  13 tell me whether this is your current curriculum                  14 vitae.                  15 A. (Reviews document.)                  16 This is not the most recent version.                  17 I think I was asked to provide an update that                  18 included the GW visit, which is how I'm judging                  19 it --                  20 Q. Okay.                  21 A. -- and this doesn't include that.                  22 Q. Did you bring a copy of your updated                  23 curriculum vitae?                  24 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 articles that are now either published or                  2 in the works that weren't listed before.                  3 MR. HEGARTY: If you could at                  4 a break get us a copy -- get me a copy of                  5 that, I would appreciate that. And I'll                  6 come back and just mark that as an                  7 exhibit.                  8 BY MR. HEGARTY:                  9 Q. Dr. Sage, do you understand that                  10 we're here today to take your deposition in the                  11 case of In re: Johnson &amp; Johnson Talc Litigation                  12 MDL, correct?                  13 A. Yes.                  14 Q. Who are the Johnson &amp; Johnson                  15 companies in this case?                  16 A. Again, I have not reviewed the case                  17 file in a litigation posture.                  18 My understanding is that Johnson &amp;                  19 Johnson's consumer subsidiary is the focal                  20 defendant. I don't recall whether the Johnson &amp;                  21 Johnson parent is also named. What little I know                  22 of litigation would suggest that many parties are                  23 named.                  24 Q. You did mention the consumer</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. Do you have it with you?                  2 A. Yes, I think -- well, I think -- let                  3 me see. I definitely do. Let me see what...                  4 MR. HEGARTY: Well, we can                  5 come back. Can I get a copy of that when                  6 we have a break if you don't have it?                  7 DR. THOMPSON: I believe                  8 that --                  9 MS. PARFITT: I thought that                  10 was given to you.                  11 DR. THOMPSON: -- was given to                  12 you in the production but...                  13 MR. HEGARTY: Okay. The one I                  14 had brought with me that I had asked                  15 folks to give me is the one I marked as                  16 Exhibit No. 3.                  17 THE WITNESS: Yeah. So --                  18 MS. PARFITT: We can check and                  19 substitute it.                  20 MR. HEGARTY: Okay.                  21 DR. THOMPSON: But I believe                  22 the only change was his current position                  23 at GW so...                  24 THE WITNESS: And a couple of</p>	<p style="text-align: right;">Page 61</p> <p>1 company. There's Johnson &amp; Johnson Consumer, Inc.                  2 Do you know when that company came                  3 into existence?                  4 A. No.                  5 Q. Did you break down for purposes of                  6 your report any analysis looking at the activities                  7 between Johnson &amp; Johnson and Johnson &amp; Johnson                  8 Consumer, Inc.?                  9 DR. THOMPSON: Object to form.                  10 THE WITNESS: I did in -- in                  11 my report. I was very interested in how                  12 the Johnson &amp; Johnson companies were                  13 organized in terms of what regulated                  14 products they produced, not just                  15 cosmetics, but drugs, medical devices,                  16 and the like and so, you know, I at a                  17 high level of generality reviewed the                  18 organizations.                  19 And I think at some point,                  20 there is a paragraph here that points out                  21 Johnson &amp; Johnson's umbrella expertise                  22 and which subsidiaries have which                  23 divisions. All of which I thought was                  24 interesting as it related to their</p>

<p>Page 62</p> <p>1 regulatory experience and obligations.                  2 BY MR. HEGARTY:                  3 Q. But in terms of the analysis that                  4 you prepared across your report, did you break                  5 down the analysis as between the Johnson &amp; Johnson                  6 and Johnson &amp; Johnson Consumer, Inc. companies?                  7 DR. THOMPSON: Object to form.                  8 THE WITNESS: No, I don't have                  9 the specific details to explain that                  10 functionally, and as you well know in                  11 terms of legal accountability, the                  12 functional assignment and legal                  13 accountability are not always the same.                  14 BY MR. HEGARTY:                  15 Q. When were you first contacted about                  16 serving as an expert in this case?                  17 A. Probably sometime in May of 2021.                  18 Q. Who contacted you?                  19 A. Dr. Margaret Thompson.                  20 Q. How was this contact made?                  21 A. Possibly e-mail, possibly telephone,                  22 possibly incidental to a general catch-up                  23 conversation.                  24 Q. Do you recall getting e-mails from</p> <p>Page 63</p> <p>1 Ms. Thompson -- Dr. Thompson prior to --                  2 A. Thank you.                  3 Q. -- about potentially serving as an                  4 expert witness before you agreed to serve as an                  5 expert?                  6 A. I'm sure there are e-mails that                  7 discuss it in some -- in some degree because I                  8 don't solicit expert witness work, and it was                  9 important to me to understand both the                  10 relationship between my regulatory expertise and                  11 this matter and, you know, where my analysis was                  12 likely to lead before I would agree to become an                  13 expert witness.                  14 Q. Do you still maintain those e-mails?                  15 A. I'm sure they exist, as all e-mails                  16 exist.                  17 MR. HEGARTY: Well, we would                  18 ask you to retain those e-mails, and we                  19 will make a request for a copy of any                  20 e-mails that were generated prior to Dr.                  21 Sage agreeing to serve as an expert                  22 witness.                  23 DR. THOMPSON: And -- sorry.                  24 MR. HEGARTY: Go ahead.</p>	<p>Page 64</p> <p>1 DR. THOMPSON: And I would                  2 claim that those e-mails are privileged                  3 as --                  4 MR. HEGARTY: I understand.                  5 DR. THOMPSON: -- a discussion                  6 of serving as an expert.                  7 MR. HEGARTY: Understood.                  8 BY MR. HEGARTY:                  9 Q. When was it that you agreed to serve                  10 as an expert witness in relation to the first                  11 contact?                  12 A. Within a month.                  13 Q. Apart from anything that you were                  14 told by the attorneys during your communications,                  15 do you know how they came to contact you?                  16 DR. THOMPSON: Object to form.                  17 BY MR. HEGARTY:                  18 Q. How Ms. Thompson -- Dr. Thompson                  19 came to contact you?                  20 A. No.                  21 Q. Do you have any social or business                  22 relationship to Dr. Thompson?                  23 A. Yes. Dr. Thompson is one of my                  24 former law students at the University of Texas,</p> <p>Page 65</p> <p>1 and I taught her in more than one class and she                  2 was a great student.                  3 Q. What years did you teach her at the                  4 law school?                  5 A. I would have forgotten exactly what                  6 years, but I was reminded that I think it was 2004                  7 or thereabouts. So probably 2004/2005 or so.                  8 Q. Have you maintained any type of                  9 social relationship with Dr. Thompson since you                  10 taught her in law school?                  11 DR. THOMPSON: Object to form.                  12 THE WITNESS: I've maintained                  13 the sorts of relationship I would have                  14 with former students and, you know,                  15 because Dr. Thompson and my family have                  16 moved in similar social circles in Austin                  17 during this time, we will run into each                  18 other from time to time.                  19 BY MR. HEGARTY:                  20 Q. Would you -- would you call                  21 Dr. Thompson a friend apart from your work on this                  22 case?                  23 A. Yes, definitely.                  24 Q. Had you known any of the other</p>
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<p style="text-align: right;">Page 66</p> <p>1 lawyers for the plaintiffs in which you have                  2 worked on on this case prior to your working with                  3 them?                  4 A. No. Since you said for the                  5 plaintiffs, that would exclude John Beisner.                  6 Q. Correct.                  7 Had you had any working relationship                  8 with Dr. Thompson prior to her contacting you                  9 about potentially serving as an expert in this                  10 case?                  11 A. We had had informal conversations                  12 over the years about various things of the sorts                  13 that I will routinely have with my former                  14 students.                  15 Q. Give me an example.                  16 A. She would be working on vaginal mesh                  17 litigation, and we would have a discussion of                  18 vaginal mesh.                  19 Q. In what sense of a discussion would                  20 you have?                  21 A. I can't recall.                  22 Q. Okay. Does your wife have a social                  23 relationship with Dr. Thompson?                  24 A. Former wife. We're divorced.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes. She had some involvement in                  2 the first campaign. I don't remember exactly for                  3 how long.                  4 Q. When was that involvement?                  5 A. I don't exactly recall. She -- she                  6 helped Karen with some of the earliest fundraising                  7 activities. I don't know the details or don't                  8 remember them.                  9 Q. This would have been at a time that                  10 you were still married, correct?                  11 A. Yes, this would have been in 2010.                  12 Q. Do you know Dr. Ellen Smith?                  13 A. I'm sorry. Ellen with an E?                  14 Q. Yes.                  15 A. Common name, but I don't think I do.                  16 Q. Do you know her husband, Dr. Alan                  17 Champion?                  18 A. Also a name I think I have heard;                  19 but, no, not personally.                  20 Q. Do you know Thomas Dydek?                  21 A. So Dydek is -- is Dr. Thompson's --                  22 one of Dr. Thompson's sons' names, and I taught                  23 one of Dr. Thompson's sons at Harvard Law School.                  24 They're actually the only mother/son combination I</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. What's her name?                  2 A. Karen Sage.                  3 Q. She's a judge, correct?                  4 A. Correct.                  5 Q. Does Judge Sage have a social                  6 relationship to your knowledge with Dr. Thompson?                  7 A. Yes.                  8 Q. Has she had any working relationship                  9 with Dr. Thompson?                  10 A. Not to my knowledge.                  11 Q. Has Dr. Thompson or her firm ever                  12 donated to your wife's campaign?                  13 DR. THOMPSON: Object to form.                  14 THE WITNESS: I don't know                  15 that for a fact. I would imagine that                  16 Dr. Thompson did donate to -- to my                  17 former wife's first campaign, but I have                  18 no recollection of specifics, and I                  19 certainly know nothing about subsequent                  20 campaigns.                  21 BY MR. HEGARTY:                  22 Q. Do you know if Dr. Thompson has                  23 had -- ever had any involvement in any of your                  24 wife's political campaigns?</p>	<p style="text-align: right;">Page 69</p> <p>1 recall teaching in my career.                  2 Q. Do you know if any attorney for the                  3 plaintiffs in this case besides perhaps                  4 Dr. Thompson ever donated any money to your wife's                  5 campaign?                  6 A. I have no knowledge of that.                  7 Q. Prior to being -- to agreeing to                  8 serve as an expert witness in this litigation, did                  9 attorneys for plaintiff tell you anything about                  10 the litigation?                  11 A. Yeah.                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: Well, yes.                  14 BY MR. HEGARTY:                  15 Q. What did they tell you?                  16 DR. THOMPSON: And I'm going                  17 to instruct you not to answer what we                  18 told you about the litigation.                  19 BY MR. HEGARTY:                  20 Q. Okay. Prior to agreeing to serve as                  21 an expert witness, did counsel for plaintiffs show                  22 you any documents?                  23 A. Yes, in that I think I specifically                  24 asked for the most recent court ruling, one of the</p>



<p style="text-align: right;">Page 70</p> <p>1 Daubert causation type rulings. I thought that                  2 would give me some of the -- the background I                  3 needed to evaluate the overall litigation and                  4 whether my particular expertise would be relevant                  5 and appropriate.                  6 Q. I want to make this clear if it's                  7 not.                  8 Was there a time before you had                  9 agreed -- was there a time between the first                  10 contact that you had with Dr. Thompson and you                  11 actually agreeing to serve as an expert witness?                  12 A. Absolutely. There was a long period                  13 of time that I had to understand how my expertise                  14 fit with this litigation, understand what I                  15 thought about the defendants' conduct and                  16 compliance or noncompliance with regulation.                  17 Yeah, I thought very seriously about it.                  18 Q. And during that period of time, did                  19 you -- did you -- let me back up.                  20 Did you ultimately bill any of the                  21 time you spent doing that to the plaintiffs'                  22 counsel after agreeing to serve as an expert                  23 witness?                  24 A. Certainly not.</p>	<p style="text-align: right;">Page 72</p> <p>1 discussions, she referred to what had happened                  2 with the case recently, including the Daubert                  3 ruling, and as you might imagine given my career,                  4 I like to read things and see for myself, and so I                  5 wanted that document.                  6 Q. Had you heard of lawsuits involving                  7 talc and ovarian cancer before being contacted by                  8 Dr. Thompson?                  9 A. Yeah, certainly.                  10 Q. And where had you heard of those                  11 lawsuits?                  12 A. In my, you know, daily and weekly                  13 health law litigation, professional                  14 responsibility, tort liability, e-mail and news                  15 feeds, and the things I read professionally on a                  16 routine basis.                  17 Q. And how much had you read, whether                  18 you do it by volume or time, spent about cases or                  19 litigation involving talcum powder use and ovarian                  20 cancer before being contacted by Dr. Thompson?                  21 A. It had been infrequent. I would --                  22 I would, you know, see this type of multidistrict                  23 or multi-plaintiff litigation referred to the same                  24 way I'd seen other cases referred to. It didn't</p>
<p style="text-align: right;">Page 71</p> <p>1 DR. THOMPSON: Object to form.                  2 THE WITNESS: Certainly not.                  3 I, frankly, bill minimally for these                  4 things.                  5 BY MR. HEGARTY:                  6 Q. And during this period of time, did                  7 you consider yourself as being a retained expert                  8 for the plaintiffs?                  9 DR. THOMPSON: Object to form.                  10 THE WITNESS: I considered                  11 myself being asked to consider being an                  12 expert. I was -- this was in the context                  13 of being asked to serve as an expert.                  14 Did I consider myself already                  15 aligned with the plaintiffs' position?                  16 Certainly not. I was making an                  17 independent decision.                  18 BY MR. HEGARTY:                  19 Q. You mentioned that you requested the                  20 Daubert ruling.                  21 Had you heard of the Daubert ruling                  22 before being contacted by plaintiffs' counsel?                  23 A. Before being contacted by                  24 Dr. Thompson, no. But in part of those</p>	<p style="text-align: right;">Page 73</p> <p>1 particularly attract my attention, but I certainly                  2 would read it. It was important.                  3 Q. And you mentioned the Daubert                  4 ruling.                  5 What other documents did you review                  6 between the time you were contacted by                  7 Dr. Thompson and when you were -- you agreed to                  8 serve as an expert as you were doing this                  9 evaluation yourself?                  10 A. That's the -- that's the document                  11 that the plaintiffs' lawyers provided that I                  12 remember at the moment. I did not ask for or                  13 receive any corporate or confidential documents.                  14 And I think what I did with respect to the talc                  15 litigation was more of the Google search of what                  16 might have happened recently and what I would see.                  17 And then I thought it worth                  18 reviewing the basics of -- of cosmetics regulation                  19 again to refresh my understanding of how the                  20 cosmetics piece fit in the larger FDA scheme.                  21 Q. And prior to being contacted by                  22 counsel for plaintiffs, Dr. Thompson, had you                  23 formed any opinions about with regard to                  24 litigation involving talcum powder use and</p>



<p style="text-align: right;">Page 74</p> <p>1 allegations of ovarian cancer?</p> <p>2 A. No.</p> <p>3 Q. You were ultimately hired as an</p> <p>4 expert witness in this case; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. The lawyers for the plaintiffs paid</p> <p>7 you to review materials and then offer opinions,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. Those opinions were ultimately set</p> <p>11 out in your July 2, 2020 -- 2021 MDL report; is</p> <p>12 that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that is the report we marked as</p> <p>15 Exhibit No. 1; is that right?</p> <p>16 I'm sorry, not Exhibit No. 1. Let</p> <p>17 me back up. I don't think I marked it.</p> <p>18 A. I don't think you marked it yet</p> <p>19 either but I --</p> <p>20 Q. Yes. Let me go ahead and mark that.</p> <p>21 A. I have a copy of it in front of me.</p> <p>22 MR. HEGARTY: So let me mark</p> <p>23 your July 2, 2021 MDL report as Exhibit</p> <p>24 No. 4.</p>	<p style="text-align: right;">Page 76</p> <p>1 materials, additional sort of building my</p> <p>2 knowledge of the facts and circumstances.</p> <p>3 Q. Are you able to break down the hours</p> <p>4 that you have spent since your last invoice on how</p> <p>5 much time you spent preparing for this deposition?</p> <p>6 A. Not off the top of my head. I do</p> <p>7 keep, you know, notes of -- of hours per day in a</p> <p>8 general sense of what I'm spending them on. So,</p> <p>9 yes, I could -- I could break that out.</p> <p>10 Q. Do you have --</p> <p>11 A. I would think it should be the</p> <p>12 majority of the 40 hours because this was the</p> <p>13 focal point, and we've rescheduled a little and</p> <p>14 it's, you know.</p> <p>15 Q. Have you spoken with any of your</p> <p>16 colleagues at work about your work on this case?</p> <p>17 A. No.</p> <p>18 Q. Have you told any of them -- any of</p> <p>19 the colleagues that you have at work -- about your</p> <p>20 opinions in this case?</p> <p>21 A. No.</p> <p>22 Q. Have you told any of the</p> <p>23 gynecologists and gynecologic oncologists at the</p> <p>24 University of Texas Dale Medical School of your</p>
<p style="text-align: right;">Page 75</p> <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 4.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. And would you confirm for me that</p> <p>5 Exhibit No. 4 is a copy of your July 2, 2021</p> <p>6 expert report?</p> <p>7 A. Yes, confirmed.</p> <p>8 Q. And your invoice that we marked</p> <p>9 previously sets out the hours you spent reviewing</p> <p>10 materials in connection with your work to prepare</p> <p>11 the report, correct?</p> <p>12 A. Yes.</p> <p>13 Q. It also sets out the time you spent</p> <p>14 drafting the report, right?</p> <p>15 A. Yes.</p> <p>16 Q. And with regard to this deposition</p> <p>17 that we're here today to do, how many -- how much</p> <p>18 time did you spend preparing for this deposition?</p> <p>19 A. Again, I think I -- when you asked</p> <p>20 earlier about accrued but unbilled time, I said I</p> <p>21 think there's about 40 hours, not including today,</p> <p>22 that have accrued between the filing of this</p> <p>23 report and now. That wasn't all preparation for</p> <p>24 the deposition. It was additional review of</p>	<p style="text-align: right;">Page 77</p> <p>1 opinions?</p> <p>2 A. No.</p> <p>3 Q. How about those same doctors at</p> <p>4 McGovern Medical School? Have you talked to</p> <p>5 them --</p> <p>6 A. Which is --</p> <p>7 Q. -- about your opinions?</p> <p>8 A. I'm sorry. You would have to remind</p> <p>9 me what McGovern Medical School is.</p> <p>10 Q. Okay. You don't know what that is?</p> <p>11 A. There -- there have been McGovern</p> <p>12 names involved in some of the University of Texas</p> <p>13 areas, but I don't actually know.</p> <p>14 Q. Well, let me ask in a broader sense.</p> <p>15 Have you spoken to any gynecologist</p> <p>16 or gynecologic oncologist at any UT healthcare</p> <p>17 facilities about your opinions in this case?</p> <p>18 A. No.</p> <p>19 Q. Have you told any doctors treating</p> <p>20 patients for ovarian cancer about your opinions in</p> <p>21 this case?</p> <p>22 A. No.</p> <p>23 Q. Have you told anyone at FDA about</p> <p>24 your opinions?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. Not yet, but I'm -- I haven't seen                  2 people yet in DC, and should I see people, I will                  3 be interested in discussing this with them.                  4 Q. Do you currently have plans to                  5 submit your report or otherwise communicate with                  6 FDA about your opinions in this case?                  7 A. I -- part of what I do routinely is                  8 work with government agencies, with legislators                  9 federal and state and, yes, I'm sufficiently                  10 concerned about some of the things that I've                  11 reached conclusions about in connection with this                  12 report that, yes, I intend to talk to people.                  13 I suspect I more like to talk --                  14 more likely to talk to Congressional staffers than                  15 I am to FDA people because I think I'm more likely                  16 to be in contact with those people.                  17 Q. Have you communicated with anyone as                  18 of today outside of plaintiffs' lawyers about your                  19 report?                  20 A. No.                  21 Q. Have you discussed this litigation                  22 or your report with any other experts that have                  23 been identified by the plaintiffs in the MDL case?                  24 A. No.</p>	<p style="text-align: right;">Page 80</p> <p>1 of this housekeeping matter.                  2 You brought some materials with you                  3 here today; is that correct?                  4 A. Yes.                  5 Q. The notebook sitting in front of                  6 you?                  7 A. Yes.                  8 Q. Is that a notebook you put together?                  9 A. No.                  10 Q. Who put it together?                  11 A. The plaintiffs' lawyer.                  12 Q. Did they put it together at your                  13 direction?                  14 A. I asked them to provide me with                  15 things that would be helpful, as I haven't been                  16 deposited in years.                  17 Q. Could you walk me through what's in                  18 the notebook?                  19 A. Certainly.                  20 There's -- there's the notices of                  21 deposition. There's the report with attachments.                  22 My invoice was here. There's a separate copy of                  23 my CV, though I noticed it was also attached to                  24 the report. There's the FDA's response to the two</p>
<p style="text-align: right;">Page 79</p> <p>1 I'm very interested in what the                  2 defense experts might say with respect to my                  3 opinions. So if those people exist, I'll look                  4 forward to reading what they -- what they think.                  5 MR. HEGARTY: I'm going to                  6 mark as exhibit number -- I guess, before                  7 I do that, do you want to take a break at                  8 this point?                  9 MS. THOMPSON: I was just                  10 thinking it's about time.                  11 MR. HEGARTY: Yeah, let's take                  12 a break.                  13 DR. THOMPSON: It's a good                  14 spot.                  15 MR. HEGARTY: Yeah, it's a                  16 good spot. Let's go off the record.                  17 (Recess: 9:21 a.m. -                  18 9:35 a.m.).                  19 MR. HEGARTY: We're back on                  20 the record.                  21 BY MR. HEGARTY:                  22 Q. Doctor, when we broke, I was going                  23 to show you a portion of your -- let me back up                  24 before I do that. I want to make sure I take care</p>	<p style="text-align: right;">Page 81</p> <p>1 Citizen's Petitions from 2014. There's some IARC                  2 material. There's some Health Canada material,                  3 and there's your client's submission to Health                  4 Canada. And then there's a little loose material.                  5 Q. What is that loose material?                  6 A. The loose material is the casebook                  7 chapter on cosmetics that I cite in the report. I                  8 requested specifically the most recent Senate                  9 version of the Personal Care Product Safety Act                  10 bill that's been introduced.                  11 There's the NCI informal statements                  12 on talc and ovarian cancer and there's a small                  13 acronym glossary that I asked -- that I                  14 specifically asked for just to refresh my memory                  15 about things like, you know, the Personal Care                  16 Products Council and what things are called so                  17 that I remember.                  18 And then there's this FDA internal                  19 review from 1998 that actually talks about the                  20 inadequacies of the CIR and actually raises                  21 concerns about the safety of talc regarding                  22 ovarian cancer.                  23 Q. Can I see that document, please?                  24 A. Certainly.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. It is a document Bates number                  2 PCPC058604 to 058654.                  3 Is this a document you've read?                  4 A. Yes.                  5 Q. And then you mentioned a list of                  6 acronyms.                  7 Is that something the lawyers for                  8 the plaintiffs prepared for you?                  9 A. At my request very specifically.                  10 MR. HEGARTY: Okay. Thank                  11 you.                  12 I mark next as Exhibit 5 a                  13 portion of your expert report.                  14 (Document marked for                  15 identification as Sage Exhibit 5.)                  16 BY MR. HEGARTY:                  17 Q. And feel free to refer to that or go                  18 to your expert report where that part is.                  19 It is the document that you have or                  20 the part of your report that has "Literature" at                  21 the top of it in the upper left-hand corner.                  22 Pages 1 through 18.                  23 And if you could look through that                  24 document and tell me whether you have read all the</p>	<p style="text-align: right;">Page 84</p> <p>1 underlying science because I actually am capable                  2 of reading the underlying science, and I wouldn't                  3 be comfortable with only having secondary sources                  4 on the underlying science.                  5 Q. With regard to this document we're                  6 looking at, Exhibit No. 5, did you prepare this?                  7 A. No, this was --                  8 Q. Who prepared it?                  9 A. Probably Brianne with the                  10 plaintiffs' lawyers.                  11 Q. And with regard to the materials                  12 that are listed in Exhibit No. 5, do you know how                  13 the plaintiffs' lawyers went about selecting these                  14 materials to send to you? What their methodology                  15 was?                  16 DR. THOMPSON: Object to form.                  17 THE WITNESS: In many                  18 instances, it was a specific request. I                  19 requested a lot of the science. I                  20 requested a lot of the historical                  21 background for context for the science.                  22 I was interested in certain                  23 types -- certain of the deposition                  24 testimony. I was interested in</p>
<p style="text-align: right;">Page 83</p> <p>1 material that is listed in those pages.                  2 A. All the material that was in these                  3 pages was made available to me. I read word for                  4 word certain items that I thought were relevant                  5 and important for my consideration. Other things                  6 I may have looked at part of. Other things I may                  7 have looked at by title.                  8 And when there were statements in my                  9 report that required or benefited from having                  10 cross-references to litigation documents, those                  11 would have been materials that plaintiffs' counsel                  12 supplied for the footnoting, and some of those I                  13 would not have read.                  14 Q. You said made available to you, are                  15 all the materials that are contained in Exhibit                  16 No. 5 sent to you by counsel for the plaintiffs?                  17 A. There was a Dropbox account made                  18 available that I -- that I could access. Certain                  19 materials were also e-mailed to me. Usually                  20 things that I had either specifically asked for or                  21 came out of drafts through discussions.                  22 I had certain things that I was very                  23 interested in in reviewing in detail. I tended to                  24 ask for those, and that included a lot of the</p>	<p style="text-align: right;">Page 85</p> <p>1 legislative action.                  2 I was very specifically                  3 interested in the defendants' responses                  4 in the defendants' case, and I repeatedly                  5 asked when we're considering particular                  6 questions, you know, well, what would the                  7 defense say on this?                  8 BY MR. HEGARTY:                  9 Q. You did receive some materials from                  10 the plaintiffs' counsel that you did not                  11 specifically request; is that correct?                  12 A. Yes.                  13 Q. Do you know how as to those                  14 materials the plaintiffs' lawyers went about                  15 choosing what to send to you?                  16 A. No, I don't know.                  17 Q. And with regard to the -- or let me                  18 back up.                  19 Do you understand the materials that                  20 we're looking at listed in Exhibit No. 5 include                  21 expert reports and some expert depositions.                  22 Do you recall that?                  23 A. Yes.                  24 Q. Are you aware that there are</p>

<p>Page 86</p> <p>1 hundreds more expert reports and depositions from                  2 the litigation, the MDL litigation, that are not                  3 on this list of materials?                  4 A. I would assume that. I don't know                  5 that for a fact.                  6 Q. Do you understand that this list                  7 only includes two reports from defense experts,                  8 Dr. Weed and Dr. Anderson.                  9 Do you understand that?                  10 A. I would have to go look through                  11 this; but, yes, I will take your word for that.                  12 Q. Well, did you ask plaintiffs'                  13 counsel to give you all the defense expert reports                  14 and depositions?                  15 A. I did not ask for all of the                  16 plaintiffs' and I did not ask for all of the                  17 defense. I asked for documents that would express                  18 key aspects of the defense positions.                  19 Q. Well, you --                  20 A. And I asked specifically for                  21 anything that might relate to -- to the regulatory                  22 analysis, of course.                  23 Q. But you would agree that you have                  24 not done a comprehensive analysis of the expert</p>	<p>Page 88</p> <p>1 are some that go into the science and not the                  2 regulatory issues, correct?                  3 A. Yes. I reviewed some science and I                  4 was particularly interested in regulatory                  5 materials, especially deposition testimony, and I                  6 was particularly interested in marketing-related                  7 materials because that goes to the informational                  8 environment and the informational obligations of a                  9 cosmetics manufacturer.                  10 Q. But you did not request all the                  11 science reports and depositions of the defense                  12 expert witnesses, correct?                  13 A. That is correct. I requested                  14 specifically what might be considered the key                  15 scientific studies on both sides of the question,                  16 and I very emphatically requested both sides of                  17 the question.                  18 Q. Did you request the key scientific                  19 opinions to the reports and depositions of all the                  20 witnesses, regardless on what side they are on?                  21 A. I didn't request every opinion. I                  22 was more interested in the underlying published                  23 scientific literature, to the extent it existed,                  24 and deposition testimony that would supplement it</p>
<p>Page 87</p> <p>1 reports and depositions in the MDL, correct?                  2 DR. THOMPSON: Object to form.                  3 THE WITNESS: I think I                  4 considered everything I needed to                  5 consider to formulate my opinions.                  6 BY MR. HEGARTY:                  7 Q. How do you know you considered                  8 everything you needed to consider if you don't                  9 know what others have said in reports and                  10 depositions that you don't have?                  11 DR. THOMPSON: Object to form.                  12 THE WITNESS: If there's a                  13 set of regulatory opinions from defense                  14 experts, I would love to see them and I                  15 would be happy to take account of them in                  16 finalizing my views.                  17 My -- my understanding was                  18 that -- having asked, was that there were                  19 not defense expert reports specific to                  20 regulation at this at this juncture. If                  21 that's wrong, I'd love to know.                  22 BY MR. HEGARTY:                  23 Q. Well, you understand that the                  24 reports and depositions included in Exhibit No. 5</p>	<p>Page 89</p> <p>1 where you couldn't actually assess the science                  2 from what had been published.                  3 Q. In your expert report, you actually                  4 cite to a report by Drs. Longo and Rigler.                  5 Do you recall that?                  6 A. I do recall that.                  7 Q. Do you recall that that's the only                  8 expert report that you specifically cite in the                  9 body of your written report?                  10 A. As -- as I recall, that is an expert                  11 report that relates to adulteration of talcum                  12 powder products with asbestos, and it was                  13 sufficiently important to highlight in the body of                  14 the report.                  15 Q. Do you intend to rely on any other                  16 expert report or deposition besides Drs. -- the                  17 report of Drs. Longo and Rigler cited in the body                  18 of your expert report?                  19 A. I consider --                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: I consider                  22 everything. Given the nature of my                  23 regulatory expertise and the fundamental                  24 opinions that I'm expressing, I think</p>

<p style="text-align: right;">Page 90</p> <p>1 it's really a question of the totality of                  2 the evidence in front of me.                  3 I don't think there's any                  4 single material that that I rely on in                  5 the sense if you're suggesting that my                  6 opinions depend only on one particular                  7 report.                  8 BY MR. HEGARTY:                  9 Q. Well, there what I want to try to                  10 find out is if you see a distinction between what                  11 you considered and what you relied upon.                  12 A. I considered.                  13 DR. THOMPSON: Object to form.                  14 THE WITNESS: My -- it's been                  15 an education to me to learn how these                  16 terms are used in this type of                  17 proceeding.                  18 I think one expresses the fact                  19 of the matter and how I think about it is                  20 that I request a lot of material. I'm                  21 provided a lot of material. I consider                  22 everything that I'm provided.                  23 I don't feel that any piece of                  24 my opinion is driven by reliance on one</p>	<p style="text-align: right;">Page 92</p> <p>1 might -- might have.                  2 BY MR. HEGARTY:                  3 Q. My follow-up question to that,                  4 though, is: You agree that you did not consider                  5 every reference in Exhibit No. 5 as part of your                  6 opinions in this case?                  7 A. I --                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: I considered                  10 the materials. Did I consider every                  11 sentence of material that I did not read                  12 every sentence of? Of course not.                  13 BY MR. HEGARTY:                  14 Q. And there are materials in this                  15 exhibit that you did not read at all, correct?                  16 DR. THOMPSON: Object to form.                  17 THE WITNESS: There are                  18 materials in this exhibit that I would                  19 have looked at the title of, and that                  20 perhaps when I had conversations with the                  21 plaintiffs' lawyers about what were the                  22 key scientific studies on each side,                  23 didn't fall in that category; and,                  24 therefore, although they were available,</p>
<p style="text-align: right;">Page 91</p> <p>1 or a small number of documents.                  2 Where I tend to think about                  3 the term "reliance" is that I'm not                  4 formulating independent scientific                  5 conclusions; and so if we're talking                  6 about scientific judgments, then I'm                  7 relying on either the published                  8 literature or the opinions of the                  9 scientific experts for those opinions.                  10 BY MR. HEGARTY:                  11 Q. You mentioned, though, that you take                  12 into account everything that you considered, but                  13 you would agree, though, that with regard to                  14 Exhibit No. 5, you did not read all the materials                  15 in Exhibit No. 5, correct?                  16 DR. THOMPSON: Object to form.                  17 THE WITNESS: I think you                  18 asked me this before, and I think I                  19 explained that things were made available                  20 and I looked at everything and decided                  21 what needed to be read in what detail.                  22 And I actually think I pursued                  23 the detail and a lot more of the science                  24 than another nonscientific expert</p>	<p style="text-align: right;">Page 93</p> <p>1 no, I did not read them.                  2 BY MR. HEGARTY:                  3 Q. And you agree you cannot consider                  4 something for your opinions that you didn't read,                  5 correct?                  6 DR. THOMPSON: Object to form.                  7 THE WITNESS: I don't agree                  8 with that. I mean, I consider universe                  9 of materials. Some things may or may not                  10 be relevant, and some things may or may                  11 not be duplicative.                  12 They're made available to me                  13 and because they're made available to me,                  14 my understanding is they're disclosed to                  15 you, and that's the universe we're                  16 discussing.                  17 BY MR. HEGARTY:                  18 Q. Do you know the names of the                  19 plaintiffs in the cases selected for trial in the                  20 MDL?                  21 A. I do not know them. So in the MDL,                  22 I don't think I know them at all.                  23 Q. Do you know anything about them,                  24 where they live, what their diagnoses were, things</p>



<p style="text-align: right;">Page 94</p> <p>1 like that?</p> <p>2 A. I know that they -- I know that at</p> <p>3 least some of them would have serous ovarian</p> <p>4 carcinomas. I don't know anything more about</p> <p>5 them.</p> <p>6 Q. How do you know that some of them</p> <p>7 had serous invasive carcinoma?</p> <p>8 A. I didn't say "invasive." I just</p> <p>9 said "ovarian," but just in the sense that I know</p> <p>10 that that's the form of ovarian cancer that's most</p> <p>11 at issue in terms of causation.</p> <p>12 Q. Do you have any knowledge of each of</p> <p>13 the plaintiffs who have been selected for trial</p> <p>14 use of baby powder?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you have any knowledge of any</p> <p>17 tissue analysis conducted for each of the</p> <p>18 plaintiffs selected for trial in the MDL?</p> <p>19 A. No, I do not.</p> <p>20 Q. As an expert in this case, you do</p> <p>21 not represent the University of Texas, correct?</p> <p>22 A. Correct.</p> <p>23 Q. You don't speak for the University</p> <p>24 of Texas, correct?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. When is the last time you practiced</p> <p>2 law?</p> <p>3 A. The last time I practiced law would</p> <p>4 have been when I was working at O'Melveny and</p> <p>5 Myers.</p> <p>6 Q. When was the last time you practiced</p> <p>7 medicine?</p> <p>8 A. Again, the last time I practiced</p> <p>9 medicine as a -- as a functional manner last time</p> <p>10 I cared for a patient in a structured clinical</p> <p>11 environment would have been when I was a resident</p> <p>12 at Johns Hopkins. However, I do have an active a</p> <p>13 Texas medical license, and I am legally entitled</p> <p>14 to practice medicine in Texas.</p> <p>15 MR. HEGARTY: I'll mark as the</p> <p>16 next exhibit, which is Exhibit No. 6, the</p> <p>17 notice for your deposition here today.</p> <p>18 (Document marked for</p> <p>19 identification as Sage Exhibit 6.)</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. And, Dr. Sage, have you seen this</p> <p>22 document before right now?</p> <p>23 A. I think I saw it briefly via e-mail.</p> <p>24 Q. Would you turn over to page 3.</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Correct.</p> <p>2 Q. You're not speaking in this case for</p> <p>3 any regulatory group or agency, correct?</p> <p>4 A. Correct.</p> <p>5 Q. You're not speaking for any law or</p> <p>6 legal group, correct?</p> <p>7 A. I'm speaking for myself, expressing</p> <p>8 my own opinions. (Laugh).</p> <p>9 Q. Right.</p> <p>10 You're speaking in this case solely</p> <p>11 for yourself, correct?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. And all the opinions in your report</p> <p>16 are your subjective opinions, correct?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: They're my</p> <p>19 professional opinions.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Okay. Are you licensed to practice</p> <p>22 law?</p> <p>23 A. I am an inactive member of the</p> <p>24 California and District of Columbia bars.</p>	<p style="text-align: right;">Page 97</p> <p>1 Starting on page 3, there's a list of 18</p> <p>2 paragraphs that carry over to page 9.</p> <p>3 Do you see that --</p> <p>4 A. Yeah.</p> <p>5 Q. -- that list?</p> <p>6 Have you read through those</p> <p>7 paragraphs before right now?</p> <p>8 A. No.</p> <p>9 Q. Is that something that we can have</p> <p>10 you read at a break, and then I'll ask you some</p> <p>11 questions about it as opposed to taking time on</p> <p>12 the record to -- to read?</p> <p>13 A. It's up to you, whichever is more</p> <p>14 convenient.</p> <p>15 MR. HEGARTY: Is that okay</p> <p>16 with you, Dr. Thompson?</p> <p>17 DR. THOMPSON: That's fine.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Okay. Would you put that aside and</p> <p>20 we'll come back to that document.</p> <p>21 A. Okay.</p> <p>22 Q. With regard to the expert report</p> <p>23 that you prepared, Exhibit No. 4, have you sent</p> <p>24 that report to anyone besides counsel for the</p>



<p>Page 98</p> <p>1 plaintiffs and, of course, them perhaps to the                  2 defense counsel?                  3 A. No. My assumption was that this was                  4 not material to be shared.                  5 Q. Do you have any drafts of this                  6 report?                  7 A. There's always versions that                  8 constitute drafts in the way that documents are                  9 evolved electronically these days, but there would                  10 be versions I'm sure.                  11 Q. And the reason I ask it that way is                  12 sometimes you'll have a report that then is                  13 drafted and is never changed -- it changes, but                  14 the original version doesn't exist.                  15 Do you have any drafts that you                  16 think still exist?                  17 A. Of an earlier version?                  18 Q. Version.                  19 A. Again, I'm really not sure how to                  20 answer that. I, you know, I write hundreds of                  21 things that end up published, and I don't know if                  22 I even know my method for writing stuff anymore.                  23 It just happens.                  24 Q. The report we marked as Exhibit</p> <p>Page 99</p> <p>1 No. 4 defines the scope of your testimony in this                  2 case, correct?                  3 A. Correct.                  4 DR. THOMPSON: Object to form.                  5 THE WITNESS: The report                  6 includes my opinions, and they're the                  7 opinions I would plan to offer.                  8 BY MR. HEGARTY:                  9 Q. As a lawyer, you understand that                  10 this report is supposed to be your testimony as if                  11 you're on the stand before a judge and a jury,                  12 right?                  13 A. Yes.                  14 Q. You understand that your opinions on                  15 what you rely -- the opinions and what you rely                  16 upon are supposed to be within the four corners of                  17 this document, right?                  18 DR. THOMPSON: Object to form.                  19 THE WITNESS: I understand                  20 that I might generate an opinion based on                  21 our conversation today. I understand                  22 that you might provide me with additional                  23 material that would cause me to                  24 supplement or modify an opinion I've</p>	<p>Page 100</p> <p>1 expressed, but these are the opinions.                  2 BY MR. HEGARTY:                  3 Q. That's fair.                  4 But prior to coming in here today,                  5 you understood that your opinions and on what you                  6 rely for those opinions was to be set out within                  7 the four corners of your July 2, 2021 report?                  8 A. Yes.                  9 DR. THOMPSON: Object to form.                  10 BY MR. HEGARTY:                  11 Q. So at least coming in here today,                  12 all the opinions that you intend to offer in this                  13 case are those set out in your report, correct?                  14 A. Correct.                  15 DR. THOMPSON: Object to form.                  16 BY MR. HEGARTY:                  17 Q. And, likewise, all the materials on                  18 which you intend to rely coming in here today were                  19 those referenced in your report, correct?                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: All the -- all                  22 the materials that I considered in                  23 generating the report are -- I don't know                  24 what I'm supposed to say, you know -- are</p> <p>Page 101</p> <p>1 contained in the report or provided to                  2 you as they're supposed to be provided.                  3 I really don't know how this                  4 works well enough, and I haven't done                  5 this before. So I'm not sure I                  6 understand all the terminology.                  7 I'm, of course, as a lawyer,                  8 you know, careful and want to comply with                  9 all requirements.                  10 BY MR. HEGARTY:                  11 Q. With regard to the substance of your                  12 report, except where you have used quotations, is                  13 it your testimony that all the sentences in your                  14 report are your own words and not copied from                  15 others?                  16 A. I'm --                  17 DR. THOMPSON: Object to form.                  18 THE WITNESS: So to the best                  19 of my knowledge, everything in the report                  20 that is not in quotation or could be                  21 understood as -- as an expression of                  22 something in something that's immediately                  23 cited, that's all original work.                  24 The same -- I do this report</p>
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<p style="text-align: right;">Page 102</p> <p>1 the same way I would do any other</p> <p>2 writing, you know, which includes having</p> <p>3 materials drawn from various sources,</p> <p>4 working with those, you know, rewriting</p> <p>5 things, re-expressing things.</p> <p>6 There's -- what I can say with</p> <p>7 confidence is, there's not a, you know,</p> <p>8 there's not a sentence or a phrase in</p> <p>9 this report that I haven't had my</p> <p>10 author's fingerprints on.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. So you know that as an author that</p> <p>13 the obligation is to properly cite material to</p> <p>14 which you are relying or referencing, correct?</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 THE WITNESS: I think I am</p> <p>17 experienced with standards for</p> <p>18 publication.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. And the obligations require that</p> <p>21 when you discuss, summarize, or paraphrase others</p> <p>22 that you include a citation to those others' work,</p> <p>23 correct?</p> <p>24 DR. THOMPSON: Object to form.</p>	<p style="text-align: right;">Page 104</p> <p>1 when, I cite and I'd be happy to share</p> <p>2 them with you if you want but...</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Well, for purposes of your report,</p> <p>5 whenever you did discuss, summarize, or paraphrase</p> <p>6 the work of others, did you include a cite to that</p> <p>7 work by others?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I suspect not</p> <p>10 universally, but, again, that wouldn't be</p> <p>11 the standards that one would apply to a</p> <p>12 lot of report writing. If you want my</p> <p>13 personal standards for citation, I'll be</p> <p>14 happy to share them.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. The report -- well, let me go back</p> <p>17 to Exhibit No. B -- I'm sorry -- Exhibit No. 5.</p> <p>18 This is the --</p> <p>19 A. Yes.</p> <p>20 Q. -- list of literature, and if you</p> <p>21 look over at page 8, there starts a number of</p> <p>22 pages that include deposition and hearing</p> <p>23 transcripts.</p> <p>24 Do you see that?</p>
<p style="text-align: right;">Page 103</p> <p>1 THE WITNESS: I think that</p> <p>2 depends very much on the context and the</p> <p>3 context in, say, an academic publication</p> <p>4 or a student dissertation might be</p> <p>5 somewhat different than in an internal</p> <p>6 law firm memo, and the standards for</p> <p>7 citation that apply to an expert report</p> <p>8 are not something I have much familiarity</p> <p>9 with, beyond the general standards I</p> <p>10 would apply to my work.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. But did you write your expert report</p> <p>13 in a method different than what you have written</p> <p>14 published articles?</p> <p>15 DR. THOMPSON: Object to form.</p> <p>16 THE WITNESS: I wrote -- I</p> <p>17 wrote it the same way I would write</p> <p>18 something, but the standards for</p> <p>19 citation, for example, vary -- vary</p> <p>20 differently between, say, a law review</p> <p>21 article and a medical journal publication</p> <p>22 or health policy. There's no single</p> <p>23 standard for what you cite and when.</p> <p>24 I have my own standards for</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Yes.</p> <p>2 Q. Did you read all of the depositions</p> <p>3 and hearing transcripts listed there in their</p> <p>4 entirety?</p> <p>5 A. Of course not. I was astonished to</p> <p>6 realize how long these depositions are. I did</p> <p>7 read several.</p> <p>8 Q. Do you recall sitting today which</p> <p>9 ones you read in their entirety?</p> <p>10 A. I don't recall sitting here. I</p> <p>11 could tell you some familiar names such as the --</p> <p>12 I mean, I know I read in its entirety over the</p> <p>13 course of several deposition days the deposition</p> <p>14 testimony of Kathleen Wille. I know I read some</p> <p>15 of, I think, a Susan Nicholson deposition.</p> <p>16 I know I read Koberna, which had to</p> <p>17 do with marketing. And I remember reading every</p> <p>18 word of a couple of the plaintiffs' experts, but</p> <p>19 that was early in my work on the case, and I don't</p> <p>20 really remember the details.</p> <p>21 Q. If you look over at page 10 above</p> <p>22 the section Other Sources, there are some trial</p> <p>23 transcripts from a case referred to as Ristesund</p> <p>24 versus Johnson &amp; Johnson.</p>

<p style="text-align: right;">Page 106</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Did you read the transcripts from</p> <p>4 the Ristesund trial that are referenced in this</p> <p>5 exhibit?</p> <p>6 A. Things here were made available to</p> <p>7 me. I -- I recall reading some PowerPoints in</p> <p>8 different connections in different points in what</p> <p>9 I was reviewing. I can't recall whether I read</p> <p>10 this particular transcript in any -- any detail.</p> <p>11 Q. Are you aware that there have been</p> <p>12 more than 10 trials involving claims of use of</p> <p>13 Johnson's Baby Powder and ovarian cancer?</p> <p>14 A. I'm aware there have been several</p> <p>15 trials and there are trials -- and there are</p> <p>16 trials ongoing. I don't mentally separate the</p> <p>17 state trials from the MDL trials. Again, I</p> <p>18 approach this as a regulatory expert. I don't</p> <p>19 approach this as a litigator.</p> <p>20 Q. Did you ask to see the trial</p> <p>21 transcripts in all the cases that have been tried?</p> <p>22 A. No.</p> <p>23 Q. Did you read all of the</p> <p>24 Bates-numbered documents that begin on page 12 and</p>	<p style="text-align: right;">Page 108</p> <p>1 are listed in these pages?</p> <p>2 A. Certainly.</p> <p>3 Q. Do you know of their methodology for</p> <p>4 how they selected those documents to send to you?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: Again, I'm --</p> <p>7 I'm struggling with what you're trying to</p> <p>8 ask me. Because it seems like to me --</p> <p>9 it seems to me as if the litigators on</p> <p>10 both sides of a case like this understand</p> <p>11 a whole lot more about how the material</p> <p>12 and references get generated in</p> <p>13 litigation than I do.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Let me ask it in a different way.</p> <p>16 Do you know how they went about</p> <p>17 choosing which Bates-numbered documents to send to</p> <p>18 you, other than those you may have asked for?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: No, I don't.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. And do you recall asking plaintiffs'</p> <p>23 counsel for any specific internal company</p> <p>24 documents?</p>
<p style="text-align: right;">Page 107</p> <p>1 carry over to page 17 -- I'm sorry -- page 18?</p> <p>2 A. No, certainly not.</p> <p>3 Q. Did you select -- did you select or</p> <p>4 ask for any of the Bates-numbered documents that</p> <p>5 are referenced on these pages?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: I don't know --</p> <p>8 I don't know the answer to that.</p> <p>9 I approach -- I approach this</p> <p>10 the way I would approach any regulatory</p> <p>11 investigation, any analytic project.</p> <p>12 It's a slightly different set of citation</p> <p>13 practices than what one might have in law</p> <p>14 review, which, as I've said, is also very</p> <p>15 different from one would have in the</p> <p>16 medical or health policy literature,</p> <p>17 which is different from what one might</p> <p>18 have in a national academy's report; and,</p> <p>19 you know, I relied on plaintiffs' counsel</p> <p>20 to understand what the requirements and</p> <p>21 norms of this type of a report were.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Did plaintiffs' counsel select at</p> <p>24 least some of the Bates-numbered documents that</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I was -- by -- by document</p> <p>2 identification, no, because I wouldn't know what</p> <p>3 the documents were. I was very interested in</p> <p>4 documents that would relate to your client's</p> <p>5 understanding of its regulatory obligations. I</p> <p>6 was very interested in documents that would relate</p> <p>7 to your client's approach to its informational</p> <p>8 environment for consumers, which gets into the</p> <p>9 marketing and advertising space.</p> <p>10 I was very interested in your</p> <p>11 client's documents that reflected your client's</p> <p>12 best understanding of the relevant science.</p> <p>13 Beyond that, you know, the references are provided</p> <p>14 for this document, I am certainly hoping and</p> <p>15 assuming, in compliance with law and beyond, but</p> <p>16 that doesn't really go to the heart of my</p> <p>17 opinions.</p> <p>18 Q. As far as the subject areas that you</p> <p>19 just referenced in your answer to my last</p> <p>20 question, did you ask plaintiffs' counsel for all</p> <p>21 the documents that Johnson &amp; Johnson had produced</p> <p>22 on those subject areas?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: No. I would</p>

<p style="text-align: right;">Page 110</p> <p>1 assume that the all -- that asking for                  2 all of anything in this type of                  3 litigation would take me years to review.                  4 I asked for things that seemed relevant                  5 and important and that were balanced and                  6 reflected arguments on both sides.                  7 BY MR. HEGARTY:                  8 Q. Well, if you didn't ask for all of                  9 the documents relating to the subject areas you                  10 described, how do you know if you got all the                  11 relevant documents on those subject areas?                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: How? (Laugh).                  14 It's -- it's interesting to be asked                  15 these questions because, you know, one is                  16 reconstructing how one does research in                  17 pretty much anything.                  18 You know, what I -- what I did                  19 is, it's a -- it's an iterative process                  20 as it would be for you evaluating a case.                  21 You look at the different pieces of -- of                  22 the case. You look at different                  23 arguments and different counterarguments                  24 and the underlying facts. And if you</p>	<p style="text-align: right;">Page 112</p> <p>1 materials that were provided to you, correct?                  2 A. I made very specific requests of                  3 plaintiffs' counsel, and I made very clear that I                  4 wanted material on both sides of every question                  5 and evaluated that.                  6 Q. What did you do to confirm that you                  7 got material on both sides of the -- of a                  8 question?                  9 DR. THOMPSON: Object to form.                  10 THE WITNESS: Well, for                  11 example, you know, I spent a good amount                  12 of time going through Johnson &amp; Johnson's                  13 submission to Health Canada, which                  14 clearly included all of the relevant                  15 science and the counterarguments to                  16 science establishing a causal connection                  17 between perineal talc exposure and                  18 ovarian cancer.                  19 I mean, I felt like that was a                  20 pretty good reflection of what the                  21 defense would offer on the scientific                  22 side.                  23 On the regulatory side on the                  24 marketing side, there seemed to be less</p>
<p style="text-align: right;">Page 111</p> <p>1 feel like you have a sense of each of                  2 what you consider the material issues,                  3 you stop.                  4 You know, if you feel like you                  5 have a one-sided view of five of the                  6 issues, then you investigate until you                  7 get the other side of those five issues.                  8 And if you think you have a piece of                  9 information you just -- that's just                  10 missing, you pursue that.                  11 I mean, you don't -- I've                  12 never ever started any project as a                  13 lawyer, as a physician, as a researcher                  14 as a professor where I say, give me                  15 everything. That's -- that's discovery,                  16 not the way I do an expert report.                  17 BY MR. HEGARTY:                  18 Q. Well, that said, I mean, I have to                  19 disagree that I -- that you approach it the way I                  20 would approach it, which you said in your answer.                  21 Because I would not approach it the way that you                  22 approached it.                  23 You do agree that you relied on the                  24 plaintiffs' counsel as far as some of the</p>	<p style="text-align: right;">Page 113</p> <p>1 material of it, and I did my best to                  2 assemble what there was and I asked                  3 repeatedly to see if there was anything                  4 more.                  5 BY MR. HEGARTY:                  6 Q. You mentioned a submission to Health                  7 Canada. You said you have it in front of you.                  8 What's the date of that submission?                  9 A. I have to go back to see.                  10 (Reviews document.)                  11 Q. Well, let me ask it different.                  12 Is there a beginning Bates number on                  13 it?                  14 A. Well, so -- so this -- so this                  15 comprehensive review document that comes from                  16 Johnson &amp; Johnson Consumer, Inc. said its current                  17 as of March 17, 2020, and the Bates number is                  18 P-1851.                  19 Q. Through what?                  20 A. Oh, I'm sorry. That's the exhibit                  21 number.                  22 Q. What's the beginning number?                  23 A. I'm sorry.                  24 Q. What's the beginning Bates number?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Sorry. You're speaking litigator</p> <p>2 language.</p> <p>3 Q. Okay.</p> <p>4 A. Page 1 of 4,528. It's a long</p> <p>5 document containing a lot of assessments and</p> <p>6 scientific references. I'm happy to hand -- hand</p> <p>7 it to you if you can.</p> <p>8 Q. Yeah, I'll take a look at it.</p> <p>9 There is --</p> <p>10 A. Oh, some -- yeah, I still don't know</p> <p>11 what you're --</p> <p>12 DR. THOMPSON: May I point?</p> <p>13 MR. HEGARTY: Sure.</p> <p>14 DR. THOMPSON: He's asking for</p> <p>15 the beginning Bates number.</p> <p>16 THE WITNESS: Okay. That's</p> <p>17 now -- now it's an eye test. All right.</p> <p>18 So it ends 485273 and it goes through</p> <p>19 485527.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. What does it say on the top of the</p> <p>22 very first page?</p> <p>23 A. Top?</p> <p>24 Q. What is the title?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Certainly.</p> <p>2 Q. Did you read the entirety of all the</p> <p>3 medical and scientific studies referenced in</p> <p>4 Exhibit No. 5?</p> <p>5 A. No, but I read probably between 10</p> <p>6 and 20 scientific studies in their entirety.</p> <p>7 Q. With regard to the scientific</p> <p>8 studies that are listed in Exhibit No. 5, were all</p> <p>9 of those provided to you by counsel for the</p> <p>10 plaintiffs?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: In other words,</p> <p>13 did anyone else provide them or did I</p> <p>14 find them on my own?</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Correct.</p> <p>17 A. They were all provided by counsel</p> <p>18 for the plaintiffs.</p> <p>19 Q. So the follow-up question is: Did</p> <p>20 you find from your own independent review any</p> <p>21 medical literature, scientific or medical</p> <p>22 literature?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Interesting</p>
<p style="text-align: right;">Page 115</p> <p>1 A. "Attachment B Johnson's Baby Talcum</p> <p>2 Powder: A Comprehensive Review 17 March 2020."</p> <p>3 Q. Okay. Thank you.</p> <p>4 There are Bates numbers in -- well,</p> <p>5 go back to Exhibit B, Doctor. This is this</p> <p>6 (indicates).</p> <p>7 A. Yes.</p> <p>8 Q. List of materials.</p> <p>9 Do you still have that exhibit in</p> <p>10 front of you?</p> <p>11 A. I do.</p> <p>12 Q. If you look at page 18, the very</p> <p>13 last page of that set of materials, there's some</p> <p>14 Bates number documents at the end listed WCD.</p> <p>15 Do you know who produced those</p> <p>16 documents?</p> <p>17 A. No.</p> <p>18 Q. Do you know if you read those</p> <p>19 documents?</p> <p>20 A. Not without looking at documents.</p> <p>21 Q. There are a number of medical and</p> <p>22 scientific studies that are included in this list</p> <p>23 of material.</p> <p>24 Do you see that?</p>	<p style="text-align: right;">Page 117</p> <p>1 question.</p> <p>2 I'm not sure I recall. I</p> <p>3 think it's -- it's fair to say that the</p> <p>4 vast majority of scientific sources were</p> <p>5 provided by counsel for the plaintiff, or</p> <p>6 were referenced or described in material</p> <p>7 that was made available, such as Johnson</p> <p>8 &amp; Johnson's Health Canada submission.</p> <p>9 It is possible I surfaced one</p> <p>10 or two things on my own as I looked</p> <p>11 around.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Did you do any type of PubMed or</p> <p>14 other search vehicle that doctors use to -- to</p> <p>15 search across the medical and scientific</p> <p>16 literature as part of your work on this case?</p> <p>17 A. I did not do a PubMed search.</p> <p>18 Q. You said the materials that</p> <p>19 plaintiffs' counsel provided to you were all sent</p> <p>20 via Dropbox?</p> <p>21 A. They were all made available in</p> <p>22 Dropbox and some of them were probably sent as</p> <p>23 e-mail attachments, but those would duplicate what</p> <p>24 was in the Dropbox.</p>



<p style="text-align: right;">Page 118</p> <p>1 Q. On page 2 of your report.</p> <p>2 A. Report or the references?</p> <p>3 Q. The report. Now we're back to the</p> <p>4 report, which is Exhibit No. 4.</p> <p>5 In the Methodology section, page or</p> <p>6 paragraph 9, you say that you were asked to answer</p> <p>7 the following questions, and you list two</p> <p>8 questions there in that paragraph, right?</p> <p>9 A. Yes.</p> <p>10 Q. Who asked you to answer those</p> <p>11 questions?</p> <p>12 A. The -- I worked with the plaintiffs'</p> <p>13 counsel to formulate the questions that I would</p> <p>14 answer in my opinion.</p> <p>15 Q. You state as well in that paragraph</p> <p>16 that you were not asked to provide an opinion on</p> <p>17 whether talc causes -- talcum powder products</p> <p>18 cause cancer, correct?</p> <p>19 A. Correct.</p> <p>20 Q. In this case, you are not offering</p> <p>21 opinions on causation, correct?</p> <p>22 A. I am not offering my independent</p> <p>23 professional assessment of causation. I am making</p> <p>24 supportable inferences about causation and risk</p>	<p style="text-align: right;">Page 120</p> <p>1 something that was referenced in -- in some,</p> <p>2 though not all, of the reports. It is the -- it</p> <p>3 is the type of, you know, causation algorithm that</p> <p>4 would be familiar in a lot of settings.</p> <p>5 In my work, I tend not to be. My</p> <p>6 expertise is, again, an expertise that involves a</p> <p>7 lot of connections and a lot of considerations and</p> <p>8 a lot of history. Nothing I do requires following</p> <p>9 an algorithm.</p> <p>10 Q. You did not do a Bradford Hill</p> <p>11 analysis with regard to talcum powder use and</p> <p>12 ovarian cancer, right?</p> <p>13 A. I did not. I did read references in</p> <p>14 some of the material to Bradford Hill criteria</p> <p>15 and -- and ovarian cancer and talc.</p> <p>16 Q. You did not do a formal risk</p> <p>17 assessment with regard to talcum powder use and</p> <p>18 ovarian cancer, correct?</p> <p>19 A. I certainly didn't do a formal risk</p> <p>20 assessment. I read a lot of risk assessment</p> <p>21 material here.</p> <p>22 Q. You did not do any type of Bradford</p> <p>23 Hill analysis or formal risk assessment with</p> <p>24 regard to asbestos and ovarian cancer, correct?</p>
<p style="text-align: right;">Page 119</p> <p>1 and uncertainty based on other expertise from</p> <p>2 other individuals.</p> <p>3 Q. And you have not done your own</p> <p>4 assessment of the medical and scientific</p> <p>5 literature as to whether talcum powder products</p> <p>6 can cause ovarian cancer, correct?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I have. I have</p> <p>9 done what I would consider to be a first</p> <p>10 pass review of the scientific literature</p> <p>11 that would be appropriate for, say,</p> <p>12 writing a solid article in the peer</p> <p>13 literature -- peer-reviewed literature</p> <p>14 about the regulatory requirements at</p> <p>15 issue here.</p> <p>16 I would be perfectly</p> <p>17 comfortable taking, you know, salient</p> <p>18 points from my report and basing a</p> <p>19 peer-reviewed article on that.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Do you know what a Bradford Hill</p> <p>22 analysis is?</p> <p>23 A. I do know. It wasn't something -- I</p> <p>24 can't recite each of the criteria. It was</p>	<p style="text-align: right;">Page 121</p> <p>1 DR. THOMPSON: Object to form.</p> <p>2 THE WITNESS: With respect to</p> <p>3 asbestos and cancer, the -- the causation</p> <p>4 analysis is from a policy perspective</p> <p>5 already definitive. There's no reason to</p> <p>6 do that.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. You did not do it?</p> <p>9 A. Did not. No need.</p> <p>10 Q. You also did not do a Bradford Hill</p> <p>11 or risk assessment analysis with regard to heavy</p> <p>12 metals and ovarian cancer, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You didn't do a Bradford Hill or</p> <p>15 risk assessment analysis with regard to fragrances</p> <p>16 and cancer risk, correct?</p> <p>17 A. I don't believe there's actually</p> <p>18 enough information in existence regarding the</p> <p>19 fragrances in these particular products for anyone</p> <p>20 to do that analysis.</p> <p>21 Q. You did not do any type of Bradford</p> <p>22 Hill or risk assessment analysis with regard to</p> <p>23 fibrous talc and ovarian cancer, correct?</p> <p>24 A. Again, fibrous talc is treated on a</p>



<p style="text-align: right;">Page 122</p> <p>1 par with asbestos in enough of the material that I</p> <p>2 read that I would give the same answer as for</p> <p>3 asbestos.</p> <p>4 Q. Okay. Did you assume for purposes</p> <p>5 of your report that talcum powder use causes</p> <p>6 ovarian cancer?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: Did I assume</p> <p>9 that talcum powder use causes ovarian</p> <p>10 cancer? Certainly not. It's talcum</p> <p>11 powder use, you know, that's a very</p> <p>12 general phrase. I could use talcum</p> <p>13 powder, you know, in many ways. Women</p> <p>14 could use talcum powder in many ways and,</p> <p>15 you know, I would have no basis for that</p> <p>16 assumption.</p> <p>17 That's different from talking</p> <p>18 about what's at issue in this case, which</p> <p>19 are specific applications and specific</p> <p>20 ways over specific periods of time with</p> <p>21 specific products whose contents are not</p> <p>22 well-established.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Well, did you assume for purposes of</p>	<p style="text-align: right;">Page 124</p> <p>1 The information that I take</p> <p>2 out of all of this material, you know,</p> <p>3 actually involves context that may not be</p> <p>4 similar to the context in, say, a</p> <p>5 particular causation report.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. You agree that you have not reviewed</p> <p>8 all of the defense expert reports as it relates to</p> <p>9 talcum powder use and ovarian cancer?</p> <p>10 A. Correct.</p> <p>11 Q. You agree that before someone</p> <p>12 testifies in court that talcum powder causes</p> <p>13 ovarian cancer, they should have done a</p> <p>14 comprehensive analysis of all the medical and</p> <p>15 scientific literature on the issue, correct?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I don't know</p> <p>18 the answer to that because I have not</p> <p>19 been asked to testify in court as to</p> <p>20 whether talcum powder causes ovarian</p> <p>21 cancer.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You certainly didn't do a</p> <p>24 comprehensive analysis of all the medical and</p>
<p style="text-align: right;">Page 123</p> <p>1 your report that any manner of talcum powder use</p> <p>2 can cause ovarian cancer?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I did not make</p> <p>5 the assumption. I relied on the</p> <p>6 scientific conclusions of scientific</p> <p>7 experts' published literature. I</p> <p>8 evaluated the confidence intervals, the</p> <p>9 risks associated, the scientific design</p> <p>10 for the science, but also the assessments</p> <p>11 of other umbrella bodies that have done</p> <p>12 some type of systematic review for</p> <p>13 whatever their own purposes are.</p> <p>14 Understand that my expertise</p> <p>15 fundamentally situates each one of these</p> <p>16 documents in a context, and it's the</p> <p>17 context that collectively forms the basis</p> <p>18 for my opinion.</p> <p>19 You know, what year, for what</p> <p>20 purpose, by what organization, subject to</p> <p>21 what types of business constraints, what</p> <p>22 types of political considerations, what</p> <p>23 types of resource constraints, that's</p> <p>24 what I do.</p>	<p style="text-align: right;">Page 125</p> <p>1 scientific literature on talcum powder use and</p> <p>2 ovarian cancer, correct?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I feel that I</p> <p>5 did a sufficient review of the scientific</p> <p>6 literature on which to base my opinions,</p> <p>7 and I actually -- actually feel quite</p> <p>8 strongly about this. Because it's one of</p> <p>9 the things that, given the preparation of</p> <p>10 this report, I made sure I could do, and</p> <p>11 I feel I have the scientific and medical</p> <p>12 background to understand that.</p> <p>13 So I actually made a very</p> <p>14 specific effort to consider the</p> <p>15 underlying science here.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. You agree you have not analyzed all</p> <p>18 the animal studies on talcum powder use and</p> <p>19 ovarian cancer, correct?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I agree.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You have not looked at all the cell</p> <p>24 studies on talcum powder use and ovarian cancer,</p>

<p style="text-align: right;">Page 126</p> <p>1 correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Again, if</p> <p>4 you're building the number of things I</p> <p>5 haven't looked at, I don't really know</p> <p>6 what the denominator is here.</p> <p>7 If, for example, there were</p> <p>8 two animal studies that were major animal</p> <p>9 studies and that's all the animal studies</p> <p>10 there were, chances are I asked for them,</p> <p>11 I received them, and I looked at them.</p> <p>12 So if you're giving me</p> <p>13 denominators, you know, where that's</p> <p>14 greater than 10 such studies, I will be</p> <p>15 happy to agree that I didn't review all</p> <p>16 of them; but if the denominator on some</p> <p>17 of this is there were three studies,</p> <p>18 possibly I did.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. Let me ask it a different way.</p> <p>21 If you reviewed the submission that</p> <p>22 Johnson &amp; Johnson made to Health Canada that we</p> <p>23 talked about earlier that are in your notebook,</p> <p>24 you know that there are hundreds of animal cell</p>	<p style="text-align: right;">Page 128</p> <p>1 ovarian cancer, correct?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: That I read all</p> <p>4 the cell studies. Again, I really find</p> <p>5 it's hard to answer questions where I</p> <p>6 don't know the denominator, but I'm happy</p> <p>7 to agree with you that there are many</p> <p>8 things that have been studied that might</p> <p>9 be plausibly related to these questions</p> <p>10 that have been published in scientific</p> <p>11 literature that I have not. But that</p> <p>12 would be true of literally any question</p> <p>13 you could ask me on any topic.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Well, let me ask it a different way.</p> <p>16 You didn't go out and try to find</p> <p>17 all the cell studies on talcum powder use and</p> <p>18 ovarian study, correct?</p> <p>19 A. Correct. I do have to reinforce</p> <p>20 that I understand the difference between the</p> <p>21 questions you're asking and the information I'm</p> <p>22 trying to provide.</p> <p>23 I made a very serious effort to</p> <p>24 consider the best available science on both sides</p>
<p style="text-align: right;">Page 127</p> <p>1 and epidemiologic studies cited in that document,</p> <p>2 correct?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I would want</p> <p>5 to -- as I would for anything, I would</p> <p>6 want to review the document. There were</p> <p>7 many studies cited. How relevant they</p> <p>8 are to the questions Health Canada was</p> <p>9 considering is a matter of debate.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. Did you read the entirety of that</p> <p>12 document?</p> <p>13 A. I read everything in that -- in the</p> <p>14 pages that, you know, I have here. I read</p> <p>15 everything that was text that I could decipher.</p> <p>16 There's a lot of things that are in tabular or</p> <p>17 supplemental fashion; and, no, I did not read</p> <p>18 those things.</p> <p>19 Q. You agree, though, that you did not</p> <p>20 read all of the studies that are cited in that</p> <p>21 document?</p> <p>22 A. I'm sure that's the case.</p> <p>23 Q. And you can't say sitting here today</p> <p>24 that you read all the cell studies on talc and</p>	<p style="text-align: right;">Page 129</p> <p>1 and to consider it over time.</p> <p>2 Q. You didn't try to go out and make</p> <p>3 sure you had found and read all the epidemiologic</p> <p>4 studies on talcum powder use and ovarian cancer,</p> <p>5 correct?</p> <p>6 A. The epidemiological studies, we --</p> <p>7 we can certainly go into particular studies; but,</p> <p>8 again, I find it very hard to answer these --</p> <p>9 these denominator questions. There tend to be a</p> <p>10 small number of case-controlled studies, a small</p> <p>11 number of cohort studies.</p> <p>12 There's a whole bunch of</p> <p>13 differences, as you well know, between studies</p> <p>14 that are looking at sort of pathways to ovarian</p> <p>15 cancer development. Each of the things in terms</p> <p>16 of inflammation, in terms of migration, in terms</p> <p>17 of deep embeddedness of talc in ovaries.</p> <p>18 There's all sorts of things that</p> <p>19 anyone with, you know, a basic expertise in</p> <p>20 medicine or science will be able to step you</p> <p>21 through; and each one of these is going to be</p> <p>22 established scientifically over time, often for</p> <p>23 reasons that are not reasons that are about</p> <p>24 Johnson &amp; Johnson baby powder and ovarian cancer,</p>

<p>Page 130</p> <p>1 and all of these, you know, collectively inform                  2 scientific judgments.                  3 So I'm happy to make any study you                  4 want to offer me. Please show me a study that you                  5 think would be relevant to my conclusions; but at                  6 the end of the day, remember I'm not offering a                  7 scientific opinion on causation of ovarian cancer                  8 from your product.                  9 Q. My question was different and listen                  10 to my question.                  11 You did not, as part of your                  12 methodology in this case, go out and search across                  13 all the medical and scientific literature to make                  14 sure you had found all of the epidemiologic                  15 studies looking at talcum powder use and ovarian                  16 cancer?                  17 A. As I said before, I did not do a                  18 PubMed search.                  19 Q. Cite for me any instances where you                  20 have analyzed before this -- getting involved in                  21 this case a cosmetic product, its manufacturer,                  22 and the applicable regulations like you've done in                  23 your report?                  24 DR. THOMPSON: Object to form.</p>	<p>Page 132</p> <p>1 an article where you've cited to internal company                  2 documents?                  3 A. I don't. I would have to go back                  4 and review articles, but there wouldn't have been                  5 internal company documents that were made directly                  6 available to me on a confidential basis. They                  7 would have been internal company documents                  8 involving, say, tobacco or -- you know, there's a                  9 lot of areas. Silicon breast implants.                  10 There are various things I've                  11 written about over the years that involve                  12 hazardous products that involve liability where                  13 internal corporate documents may well be part of                  14 the analysis, but I would have to go back and                  15 look.                  16 Q. Besides sitting here today, can you                  17 cite for me any published articles of yours where                  18 you cited in that article internal company                  19 documents?                  20 A. Not that I --                  21 DR. THOMPSON: Object to form.                  22 THE WITNESS: Not that I can                  23 recall right now, but I've written a lot                  24 of articles.</p>
<p>Page 131</p> <p>1 THE WITNESS: I have not had                  2 cause to analyze a cosmetic manufacturer.                  3 I would emphasize that I, as a good                  4 litigator mind in a litigation context, I                  5 analyze regulatory problems across                  6 industries all the time.                  7 BY MR. HEGARTY:                  8 Q. Have you ever published an analysis,                  9 like you've done here, looking at the manufacturer                  10 of a cosmetic product and the product itself?                  11 DR. THOMPSON: Object to form.                  12 THE WITNESS: No.                  13 BY MR. HEGARTY:                  14 Q. Have you ever published an article                  15 where you've given opinions based on internal                  16 company documents?                  17 DR. THOMPSON: Object to form.                  18 THE WITNESS: I'm sorry. If                  19 by "opinion" do you mean an expert                  20 witness opinion in litigation? We've                  21 established that I don't do that very                  22 much.                  23 BY MR. HEGARTY:                  24 Q. Well, when have you ever published</p>	<p>Page 133</p> <p>1 BY MR. HEGARTY:                  2 Q. Have you ever written an article                  3 where you've cited to an expert report in                  4 litigation?                  5 DR. THOMPSON: Object to form.                  6 THE WITNESS: I also don't                  7 know that for a fact, but I can't recall                  8 any.                  9 BY MR. HEGARTY:                  10 Q. In paragraph 10 of your report, you                  11 discuss the literature that you reviewed.                  12 Did anyone help you in reviewing the                  13 literature or searching for literature, someone at                  14 your office or otherwise?                  15 A. No, I didn't -- didn't use any                  16 research assistants or any -- any other                  17 individuals for assistance here.                  18 Q. Other than doing you mentioned a                  19 Google search before, did you do -- use any other                  20 formal methods of searching for materials in                  21 preparing your report?                  22 DR. THOMPSON: Object to form.                  23 THE WITNESS: So I reviewed                  24 sort of the leading casebook on food,</p>

<p style="text-align: right;">Page 134</p> <p>1 drug, and cosmetic regulation that had a                  2 chapter on -- on cosmetic regulation that                  3 gave rise to a whole bunch of sources                  4 that I may have, you know, Googled to                  5 look at a Federal Register something                  6 or -- or some particular reference, some                  7 other -- some earlier cosmetic-related                  8 controversy.</p> <p>9 You know, this is -- this is a                  10 casebook, you know, including among its                  11 authors Peter Hutt, who, you know, is a                  12 long-time expert I have great respect for                  13 who tends to represent the cosmetics                  14 industry in a lot -- in a lot of                  15 policy-related proceedings.</p> <p>16 So yes, I did a lot of                  17 additional research based on things that                  18 I -- I discovered reviewing that                  19 material, reviewing other material.                  20 It's, again, standard practice with me to                  21 follow what you think are important                  22 leads.</p> <p>23 BY MR. HEGARTY:                  24 Q. With regard to the materials that</p>	<p style="text-align: right;">Page 136</p> <p>1 considered for purposes of preparing your report?                  2 DR. THOMPSON: Object to form.                  3 THE WITNESS: My description                  4 of the methodology at a relatively high                  5 level is contained in paragraphs 9 and 10                  6 and reflects exactly how I would go about                  7 a regulatory analysis in any                  8 health-related area, in the safety                  9 risk-related area and, frankly, a whole                  10 lot of regulatory areas that are -- that                  11 are not about human health and safety                  12 where there are governing statutes.                  13 There are regulatory systems. There are                  14 self-regulatory systems. There are                  15 balances of federal and state authority.                  16 There is a historical context,                  17 a political context, an industrial, and                  18 organizational context. Sometimes a                  19 professional context, which is, of                  20 course, very important to distinguishing                  21 drug regulation from cosmetic regulation.                  22 This is all routine for me.                  23 It's exactly what I do if I'm writing an                  24 article to teach a class or even just,</p>
<p style="text-align: right;">Page 135</p> <p>1 you did review, did you assign any weight --                  2 formally assign any weight to the materials for                  3 purposes of writing your report?                  4 DR. THOMPSON: Object to form.                  5 THE WITNESS: I mean, there                  6 are basic hierarchies, you know, in terms                  7 of legal authority. There are, you know,                  8 but other than that, there are no                  9 specific criteria for assigning weight.                  10 I mean, one's regulatory expertise is not                  11 the same as doing a quantitative risk                  12 analysis or a meta-analysis.</p> <p>13 BY MR. HEGARTY:                  14 Q. Well, in preparing your report, did                  15 you assign a numerical value to the weight of the                  16 materials that you reviewed?                  17 A. No.                  18 DR. THOMPSON: Object to form.                  19 THE WITNESS: Except perhaps                  20 how heavy they were. (Laugh).                  21 BY MR. HEGARTY:                  22 Q. Do you explain anywhere in your                  23 report the methodology that you went about that                  24 you used in identifying the materials that you</p>	<p style="text-align: right;">Page 137</p> <p>1 you know, at home thinking about a                  2 current event.                  3 BY MR. HEGARTY:                  4 Q. Did plaintiffs' counsel give you                  5 access to a database of all the documents that                  6 Johnson &amp; Johnson had produced in this case?                  7 A. They didn't give me direct access to                  8 a very large universe of documents. Presumably,                  9 they gave me access to the documents they thought                  10 were relevant, but I actually don't know how they                  11 assembled their documents and do their management.                  12 Q. You did not yourself do any type of                  13 search over a database of documents produced using                  14 search terms to look for company -- internal                  15 company documents --                  16 A. I did not.                  17 Q. -- that Johnson &amp; Johnson produced?                  18 A. I did not.                  19 Q. But plaintiffs' counsel did provide                  20 you with some internal company documents that have                  21 been produced in this case, correct?                  22 A. Correct.                  23 Q. These were not documents you                  24 selected from a larger set, correct?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. Except --</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: Except insofar</p> <p>4 as I asked for the things that I thought</p> <p>5 were not evident from what I had already</p> <p>6 reviewed. For example, asking for</p> <p>7 material that would bear on marketing</p> <p>8 decisions, marketing languages,</p> <p>9 strategies over time for Johnson &amp;</p> <p>10 Johnson consumer products and</p> <p>11 specifically for Johnson's Baby Powder.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Did you ever ask for specific</p> <p>14 document by Bates number or title of that</p> <p>15 document?</p> <p>16 A. Not to my recollection. It would</p> <p>17 never have been by Bates number. It's possible</p> <p>18 that there was in a deposition transcript some</p> <p>19 reference to a document that I then requested. I</p> <p>20 don't recall.</p> <p>21 Q. Are you aware that Johnson &amp; Johnson</p> <p>22 has produced thousands of documents regarding</p> <p>23 communications with FDA, thousands of documents,</p> <p>24 if not hundreds of thousands of documents,</p>	<p style="text-align: right;">Page 140</p> <p>1 some of these documents that the P numbers are</p> <p>2 plaintiffs' exhibits from trial? Did you</p> <p>3 understand that?</p> <p>4 A. I do understand that.</p> <p>5 Q. Did you ask plaintiffs' counsel to</p> <p>6 give you all the defense exhibits that had been</p> <p>7 introduced at trials?</p> <p>8 A. I asked. I did not ask for all the</p> <p>9 defense exhibits. I did not ask for all the</p> <p>10 plaintiffs' exhibits. I did ask for the defense</p> <p>11 perspective on the issues that were relevant to my</p> <p>12 opinions.</p> <p>13 Q. Did you --</p> <p>14 A. I asked --</p> <p>15 Q. I'm sorry.</p> <p>16 A. I'm sorry. I asked repeatedly for</p> <p>17 that.</p> <p>18 Q. Well, did you ask specifically for</p> <p>19 defense exhibits that had been introduced at</p> <p>20 trial?</p> <p>21 A. No.</p> <p>22 Q. And what did you do to confirm that</p> <p>23 the plaintiffs' counsel gave you a fair</p> <p>24 representation of the documents on the issues you</p>
<p style="text-align: right;">Page 139</p> <p>1 regarding testing of talc for asbestos.</p> <p>2 Are you aware of that?</p> <p>3 A. I am aware of a number of FDA</p> <p>4 contacts and a number of testing-related materials</p> <p>5 that Johnson &amp; Johnson has introduced into this</p> <p>6 litigation. I have no idea what number they are,</p> <p>7 and, again, I have no idea of how relevant they</p> <p>8 are.</p> <p>9 Q. In the document we're looking at</p> <p>10 before, Exhibit No. 5, there are a number of</p> <p>11 plaintiff exhibits that are identified by P</p> <p>12 numbers beginning on page 16 and carrying over to</p> <p>13 page 17.</p> <p>14 Do you see those pages?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall looking at any of the</p> <p>17 documents that have a P number on them, an exhibit</p> <p>18 sticker?</p> <p>19 A. I certainly have looked at documents</p> <p>20 with P numbers, such as Johnson &amp; Johnson response</p> <p>21 to Health Canada, which we just discussed, which</p> <p>22 had a P number on it. I noticed there were P</p> <p>23 numbers on some documents.</p> <p>24 Q. Did you understand in looking at</p>	<p style="text-align: right;">Page 141</p> <p>1 talk about in your report?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: I -- my</p> <p>4 confirmation was looking at the internal</p> <p>5 consistency of what I was reviewing and</p> <p>6 the opinions I was formulating based on</p> <p>7 it. I think I would have noticed</p> <p>8 significant biases. I think I would have</p> <p>9 noticed significant gaps.</p> <p>10 But, no, I didn't do any</p> <p>11 structured confirmation and I certainly</p> <p>12 didn't -- I mean, other than an informal</p> <p>13 request, I'm not sure what I could have</p> <p>14 done. So I didn't.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Have you ever outside of any</p> <p>17 litigation work in your professional career ever</p> <p>18 relied on documents that were selected for you to</p> <p>19 review by a plaintiff's lawyer?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: Again, yes, in</p> <p>22 the sense that I was the principal</p> <p>23 investigator of a very large</p> <p>24 investigation on medical malpractice</p>



<p style="text-align: right;">Page 142</p> <p>1 policy that was funded by the Pugh Trust,                  2 which involved outreach to a whole lot of                  3 people and, you know, that included                  4 plaintiff's lawyers, defense lawyers,                  5 insurance companies, you know, physician,                  6 and hospital organizations and others.                  7 And, you know, when I asked for materials                  8 from each of them, I got the materials                  9 that they gave me.                  10 BY MR. HEGARTY:                  11 Q. My question was as to any                  12 non-litigation work you've ever done, not regular                  13 litigation.                  14 A. This is non-litigation.                  15 Q. Which part?                  16 A. Everything I just said was                  17 non-litigation.                  18 Q. And what was the situation?                  19 A. A large grant program that I led on                  20 medical liability.                  21 Q. Let me ask it a different way.                  22 In any publication of yours, have                  23 you ever relied in the materials that you reviewed                  24 on a plaintiff's lawyer to provide you the</p>	<p style="text-align: right;">Page 144</p> <p>1 In any publication of yours, have                  2 you ever reviewed in preparing that publication                  3 materials that were provided to you from a                  4 plaintiff's lawyer that were produced in a                  5 litigation?                  6 A. That were -- that were -- I'm sorry.                  7 That were produced through discovery in the                  8 litigation?                  9 Q. Correct.                  10 A. I'm sorry. I misunderstood the                  11 question.                  12 Not to my knowledge.                  13 Q. Are you aware that Johnson &amp; Johnson                  14 has put on a website all the facts about talc,                  15 thousands of documents that have been introduced                  16 in the lawsuits in -- in these cases?                  17 A. I reviewed -- on my own initiative,                  18 I reviewed some of The Facts About Talc web pages                  19 that Johnson &amp; Johnson makes available                  20 consumer-facing. I didn't -- I didn't think of                  21 that as a litigation-related resource, and if                  22 there were links to a document trove, I didn't --                  23 I didn't notice that.                  24 Q. So you did not review the internal</p>
<p style="text-align: right;">Page 143</p> <p>1 materials?                  2 A. To provide me some of the materials?                  3 I'm sure I have.                  4 Q. When have you ever written an                  5 article that where you relied on materials that                  6 came -- that came from a plaintiff's lawyer?                  7 A. If I were writing on medical                  8 liability and making certain points and sometimes                  9 the only way you could get information about                  10 opinions that were not publicly reported or other                  11 insights, I'm relying on the people I'm talking                  12 to.                  13 Again, perhaps I'm misunderstanding                  14 your question.                  15 Q. Yeah.                  16 Have you ever in any article that                  17 you've published ever relied on the materials for                  18 that article from a plaintiff's lawyer to produce                  19 materials produced in litigation?                  20 A. I think we're also back to sort of                  21 some ambiguity between: Are you drawing a                  22 distinction between considered or relied on or can                  23 we use relied in a casual sense of --                  24 Q. Let me ask it a different way.</p>	<p style="text-align: right;">Page 145</p> <p>1 Johnson &amp; Johnson documents that are on that Facts                  2 About Talc website?                  3 DR. THOMPSON: Object to form.                  4 THE WITNESS: Again, it                  5 depends. It depends what they were, and                  6 if you would like to show me something,                  7 perhaps I'll remember that I saw it or                  8 not.                  9 Again, that Facts About Talc                  10 website that I saw contained, you know,                  11 various statements and various links to                  12 other pages. Some of which may have been                  13 to documents rather than HTML sites, and                  14 so it's possible.                  15 But, you know, did I look                  16 comprehensively through something that                  17 was presented as a database of documents?                  18 No, I did not.                  19 MR. HEGARTY: Why don't we go                  20 ahead and take a break. It's been                  21 another hour and some.                  22 DR. THOMPSON: Okay.                  23 MR. HEGARTY: Okay. Go off                  24 record.</p>

<p style="text-align: right;">Page 146</p> <p>1 (Recess: 10:40 a.m. -                  2 11:02 a.m.)                  3 MR. HEGARTY: We are back on                  4 the record.                  5 BY MR. HEGARTY:                  6 Q. Doctor, we were talking about                  7 Exhibit No. 5 and in particular some of the                  8 literature that's listed on there.                  9 Had you read any medical or                  10 scientific literature regarding talc and ovarian                  11 cancer before being contacted by counsel for                  12 plaintiffs in this case?                  13 A. I probably had, but I don't recall                  14 the specifics. It's been an issue for a long                  15 time.                  16 Q. When you say you probably had, would                  17 that have been, if at all, back when you were in                  18 medical school and then doing your internship or                  19 residency?                  20 A. No. It would more likely have been                  21 during my teaching career because health and                  22 safety regulation and health law policy are what I                  23 do.                  24 Q. But sitting here today, can you say</p>	<p style="text-align: right;">Page 148</p> <p>1 ovarian cancer specific.                  2 Q. Had you read any articles prior to                  3 being contacted by plaintiffs' counsel looking at                  4 heavy metal use and ovarian cancer -- heavy metal                  5 exposure and ovarian cancer?                  6 A. No.                  7 Q. All of the opinions that are set out                  8 in your report that we marked previously as                  9 Exhibit No. 4 were formed after you were contacted                  10 by plaintiffs' counsel about testifying as an                  11 expert in this case, correct?                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: Yes. After I                  14 was contacted to consider whether I would                  15 be an expert in this case, yes.                  16 BY MR. HEGARTY:                  17 Q. You mentioned that prior to being                  18 contacted by counsel for plaintiffs in this case                  19 that you had been aware of an alleged link between                  20 talcum powder use and ovarian cancer, correct?                  21 A. Correct.                  22 Q. And you talked generally about news                  23 sources and other general perhaps sources that you                  24 would see in your work that refer to -- referred</p>
<p style="text-align: right;">Page 147</p> <p>1 definitively that you had read any medical                  2 literature, whether it's an epidemiologic article                  3 or cell study or animal study, on talcum powder                  4 use and ovarian cancer before being contacted by                  5 counsel for the plaintiffs in this case?                  6 A. I believe that it's extremely likely                  7 that I did because it's a big issue.                  8 Q. Can you identify for me any article                  9 you had read or the time period in which you had                  10 read such an article?                  11 A. Not specifically.                  12 Q. So are you able to identify for me                  13 any article that you had read -- medical or                  14 scientific article about talcum powder use and                  15 ovarian cancer before being contacted by                  16 plaintiffs' counsel?                  17 A. Can I identify it now? No.                  18 Q. Had you read any article looking at                  19 asbestos and ovarian cancer prior to being                  20 contacted by plaintiffs' counsel in this case?                  21 A. I have read a lot of                  22 asbestos-related documents over the years in dribs                  23 and drabs as things came up. Most of them were                  24 mesothelioma related. I don't recall any being on</p>	<p style="text-align: right;">Page 149</p> <p>1 to talcum powder use and ovarian cancer.                  2 Are you able to cite any specific                  3 things you had read prior to being contacted by                  4 Dr. Thompson as it relates to talcum powder use                  5 and ovarian cancer?                  6 A. I can't cite them specifically.                  7 Most of the things I would see in the ordinary                  8 course would be things that had either a                  9 law-related or a health policy-related connection.                  10 Most of my, you know, daily news feed type sources                  11 are not, you know, the clinical literature as                  12 much.                  13 Now if something had shown up that                  14 was, you know, JAMA New England Journal style                  15 publication or, you know, abstracted in some                  16 compendium, you know, major clinical News of the                  17 Week, the old AMA news sites, then I would have                  18 seen it in that connection.                  19 But, you know, this is a major                  20 concern and a major source of -- of potential                  21 liability and litigation. So, of course, as a law                  22 and medical school professor, I've seen                  23 references.                  24 Q. As a medical student and then when</p>

<p style="text-align: right;">Page 150</p> <p>1 you finished law and medical school and did some                  2 clinical practice in medicine, did you ever read                  3 anything or were you ever taught anything as it                  4 relates to talcum powder use and ovarian cancer?                  5 A. Not that I recall.                  6 Q. You -- first back up.                  7 Have you ever taught in any course                  8 of yours -- let me ask it a different way.                  9 Have you ever referenced in any                  10 course you have taught anything about talcum                  11 powder use and ovarian cancer or litigation                  12 involving talcum powder use and ovarian cancer?                  13 A. Not that I recall.                  14 Q. You cite in your report to such                  15 organizations as IARC, Health Canada, and the FDA.                  16 Do you recall that?                  17 A. Yes.                  18 Q. So do you agree that it was                  19 important for your methodology in this case to                  20 consider what these health authorities have to say                  21 about talc use and ovarian cancer, correct?                  22 DR. THOMPSON: Object to form.                  23 THE WITNESS: Correct, with                  24 the addition that my opinion is</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes.                  2 Q. As this letter shows, and as you                  3 know from your own analysis, FDA did receive two                  4 Citizen Petitions asking that a warning be placed                  5 on talc products, and they give a couple examples                  6 of those types of warnings on the first page of                  7 this exhibit, right?                  8 A. They don't give examples. They give                  9 the specific warnings that were requested in the                  10 Citizen's Petitions.                  11 Q. Fair enough.                  12 And in 2014, FDA determined that the                  13 data did not demonstrate a causal association                  14 between talcum powder use in the perineal area and                  15 ovarian cancer, correct?                  16 A. To quote from that letter, as I                  17 described in paragraph 150 of my opinion, the                  18 letter says:                  19 "While the growing body of evidence                  20 to support a possible association ... is difficult                  21 to dismiss, the evidence is insufficient for FDA                  22 to require as definitive a warning as you are                  23 seeking."                  24 It's not exactly what you had quoted</p>
<p style="text-align: right;">Page 151</p> <p>1 fundamentally about regulatory compliance                  2 and self-regulatory conduct and not about                  3 causation.                  4 BY MR. HEGARTY:                  5 Q. On page 11 -- let me not -- I don't                  6 need to reference your report. Let me just back                  7 up.                  8 You mentioned earlier when you went                  9 through the materials that you had in front of you                  10 that you -- the April 2014 FDA letter denying two                  11 Citizen's Petitions seeking warnings about the                  12 risk of ovarian cancer with talcum powder use,                  13 correct?                  14 A. Correct.                  15 MR. HEGARTY: I'm going to                  16 mark as Exhibit No. 7 a copy of that                  17 April 1, 2014 letter.                  18 (Document marked for                  19 identification as Sage Exhibit 7.)                  20 BY MR. HEGARTY:                  21 Q. So you've seen this before, correct?                  22 A. I have.                  23 Q. You comment about it in your report,                  24 right?</p>	<p style="text-align: right;">Page 153</p> <p>1 there.                  2 Q. Well, on the first page of the -- of                  3 Exhibit No. 7, second last paragraph, last line,                  4 it says:                  5 "FDA did not find that the data                  6 submitted presented conclusive evidence of a                  7 causal association between talc use and the                  8 perineal area and ovarian cancer."                  9 Correct?                  10 A. Certainly with the emphasis on                  11 "conclusive" which is the only word that makes                  12 that consistent with the language that I quoted to                  13 you.                  14 Q. And FDA did a comprehensive review                  15 of the science in rejecting these opinions,                  16 correct? I'm sorry. These petitions, correct?                  17 DR. THOMPSON: Object to form.                  18 THE WITNESS: I don't know                  19 exactly what the FDA did. There are                  20 extraordinary gaps in time and                  21 extraordinary issues of resources between                  22 1994 petition and the 2014 response.                  23 BY MR. HEGARTY:                  24 Q. Are you an expert in the process by</p>

<p style="text-align: right;">Page 154</p> <p>1 which FDA reviews and responds to Citizen                  2 Petitions?                  3 DR. THOMPSON: Object to form.                  4 THE WITNESS: My expertise in                  5 how agencies communicate with public and                  6 industry is sufficient to make me an                  7 expert in evaluating this letter.                  8 BY MR. HEGARTY:                  9 Q. Have you ever been involved in an                  10 FDA review of a Citizen Petition?                  11 A. No.                  12 Q. How many Citizen Petitions and FDA                  13 responses have you ever read?                  14 A. Probably -- well, I certainly have                  15 read the response from the 1990s on urocanic acid                  16 because that one is highly relevant to this case.                  17 Q. On what? I'm sorry.                  18 A. Urocanic acid.                  19 Q. Okay.                  20 A. U-r-o-c-a-n-i-c.                  21 Because that's rather relevant here                  22 because it includes the "safety not determined"                  23 language.                  24 I have looked at the extent to which</p>	<p style="text-align: right;">Page 156</p> <p>1 that's many years -- many years ago.                  2 Q. Have you ever submitted materials in                  3 connection with FDA considering a Citizen                  4 Petition?                  5 A. No.                  6 Q. Have you ever drafted or been                  7 involved in the drafting of FDA's responding to a                  8 Citizen Petitions?                  9 A. No.                  10 Q. Do you know who Steve Musser is at                  11 FDA?                  12 A. No.                  13 Q. Do you know where he went to school?                  14 A. No.                  15 Q. Do you know his educational                  16 background?                  17 A. Well, he's got a PhD. So I can tell                  18 you he didn't go to medical school; but, no, I                  19 don't know where he went to school. I did not --                  20 I did not look him up.                  21 Q. Did you try to talk to him about the                  22 2014 letter?                  23 A. No.                  24 Q. Why not?</p>
<p style="text-align: right;">Page 155</p> <p>1 Citizen's Petitions are publicly available on a                  2 database. The ones relating to cosmetics do not                  3 appear to be. So I've become very interested in                  4 the Citizen Petition process.                  5 But prior to considering these --                  6 these issues, no, I had not looked at Citizen                  7 Petitions except in passing. You do see Citizen's                  8 Petitions when you teach regulatory topics.                  9 Q. And the urocanic acid Citizen                  10 Petition was something you reviewed after being                  11 hired as an expert in this case, correct?                  12 A. Yes.                  13 Q. Have you ever discussed with anyone                  14 at FDA about FDA's handling of Citizen Petitions?                  15 A. No. It's very high on my list for                  16 when I am in contact again with FDA officials, and                  17 I am friends with a couple of former                  18 commissioners, and should I run into them, it will                  19 be one of the things I will be interested in                  20 discussing.                  21 Q. Who are you friends with?                  22 A. I'm friends with Mark McClellan and                  23 I'm acquaintances with Scott Gottlieb. And in the                  24 old days, I was friends with Don Kennedy, but</p>	<p style="text-align: right;">Page 157</p> <p>1 A. I don't know him and I would have no                  2 reason to contact him. I also, from perhaps lack                  3 of experience with serving as an expert witness,                  4 decided that my reviews and research should be                  5 documentary and not involve individuals.                  6 Q. Did anybody instruct you as part of                  7 your work as an expert witness that you couldn't                  8 reach out to others and talk to them?                  9 A. No one instructed me. It was my --                  10 it was my working assumption. Seemed a prudent                  11 way to do a report.                  12 Q. Do you contend that the doctors and                  13 scientists at the FDA involved in responding to                  14 the two Citizen Petitions were not qualified to                  15 assess the safety of talc?                  16 A. I --                  17 DR. THOMPSON: Object to form.                  18 THE WITNESS: I express no                  19 opinions on their qualifications.                  20 Again, I would point out that                  21 responses to Citizen's Petitions are not                  22 definitive responses on the underlying                  23 scientific questions. They are responses                  24 to a specific request for a specific</p>

<p style="text-align: right;">Page 158</p> <p>1 action, in this case, for a specific</p> <p>2 warning statement.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Well, is it your contention that if</p> <p>5 FDA believed a warning was needed beyond just what</p> <p>6 was proposed that they would have taken -- they</p> <p>7 would not have taken this action?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. Let me ask it in a different way.</p> <p>11 Is it your contention that FDA</p> <p>12 believed a warning was needed, just not the ones</p> <p>13 that were requested in the Citizen Petitions?</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: I have no basis</p> <p>16 to know what FDA in some organizational</p> <p>17 sense believes on that topic. What I</p> <p>18 have is the regulatory provisions under</p> <p>19 which a Citizen's Petition is submitted,</p> <p>20 and I have this particular response.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. Is it your contention that FDA</p> <p>23 believed that there is a risk of ovarian cancer</p> <p>24 with talc use and chose to do nothing about it?</p>	<p style="text-align: right;">Page 160</p> <p>1 one thing I will opine is that there's</p> <p>2 nothing in this letter that should</p> <p>3 suggest to anyone that FDA thinks that</p> <p>4 talcum powder products do not cause</p> <p>5 ovarian cancer.</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. I'm sorry. What did you just say in</p> <p>8 this last sentence? I didn't...</p> <p>9 A. Would you rather it read back?</p> <p>10 MR. HEGARTY: Yeah. Would you</p> <p>11 read it back, the last part of that</p> <p>12 response, please?</p> <p>13 (The reporter read the record</p> <p>14 on page 159 line 23 to page 160 line 5.)</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. So is it your testimony in this case</p> <p>17 that FDA believes that talcum powder use causes</p> <p>18 ovarian cancer?</p> <p>19 A. I don't know what they believe, but</p> <p>20 this letter doesn't say that they believe that</p> <p>21 there is no causal association. It is simply a</p> <p>22 response, and a rather sloppily drafted response,</p> <p>23 to two Citizen's Petitions issued 20 years after</p> <p>24 the first one. It says what it says, and I can't</p>
<p style="text-align: right;">Page 159</p> <p>1 A. Again --</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: -- I do not know</p> <p>4 anything about FDA's belief.</p> <p>5 I would repeat. What we see</p> <p>6 in this letter, which if I were</p> <p>7 supervising does not meet my standards</p> <p>8 for clarity, is the sentence you cited,</p> <p>9 quoted, which was:</p> <p>10 "FDA did not find that the</p> <p>11 data submitted" -- notice submitted, not</p> <p>12 all the data that might be available --</p> <p>13 "presented conclusive evidence."</p> <p>14 And then the language that I</p> <p>15 quoted back, which says:</p> <p>16 "Growing body of evidence to</p> <p>17 support a possible association ... is</p> <p>18 difficult to dismiss. Evidence is</p> <p>19 sufficient -- insufficient for FDA to</p> <p>20 require as definitive a warning as you</p> <p>21 are seeking."</p> <p>22 I think this is a badly</p> <p>23 drafted letter. I think it is hard to</p> <p>24 interpret and sounds rather evasive, but</p>	<p style="text-align: right;">Page 161</p> <p>1 give you anymore insight into the dynamics of the</p> <p>2 final text and what we have in front of us.</p> <p>3 Q. Is it your opinion in this case that</p> <p>4 FDA failed to do its job with regard to responding</p> <p>5 to the two Citizen Petitions?</p> <p>6 DR. THOMPSON: Object to form.</p> <p>7 THE WITNESS: It's my opinion</p> <p>8 that FDA is grossly underresourced with</p> <p>9 respect to cosmetics.</p> <p>10 It's my opinion the Citizen's</p> <p>11 Petition process needs a significant</p> <p>12 revision, and I think this -- these two</p> <p>13 petitions and this particular response as</p> <p>14 issued at this time, you know, supports</p> <p>15 my belief that -- that the Citizen's</p> <p>16 Petition process is in need of</p> <p>17 improvement.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Well, my question wasn't very</p> <p>20 specific.</p> <p>21 Is it your opinion in this case that</p> <p>22 FDA failed to do its job that it was tasked to do</p> <p>23 by Congress with regard to responding to these two</p> <p>24 Citizen Petitions?</p>



<p style="text-align: right;">Page 162</p> <p>1 MS. PARFITT: Objection.</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: See, this will</p> <p>4 begin to move us into kind of the core of</p> <p>5 the opinions, which is that FDA has very</p> <p>6 limited authority over cosmetics. FDA</p> <p>7 does not supervise the self-regulatory</p> <p>8 processes that cosmetics manufacturers in</p> <p>9 the cosmetics industry engage in, and the</p> <p>10 fundamental obligations remain on the</p> <p>11 manufacturers.</p> <p>12 This letter offered an</p> <p>13 opportunity -- I should say, these two</p> <p>14 Citizen's Petitions offered an</p> <p>15 opportunity for the FDA to devote more of</p> <p>16 its resources to this particular</p> <p>17 cosmetics-related concern, and FDA</p> <p>18 declined to take that opportunity.</p> <p>19 But beyond that, I cannot</p> <p>20 opine as to their motivation as to the</p> <p>21 pressures brought to bear on them, as to</p> <p>22 the competing uses of their resources.</p> <p>23 All the things that sort of go into why</p> <p>24 this letter is issued at this time.</p>	<p style="text-align: right;">Page 164</p> <p>1 Johnson regarding the hazards of perineal</p> <p>2 application of talc.</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. And I'm still not sure you answered</p> <p>5 my question.</p> <p>6 Is it, do you have an opinion that</p> <p>7 FDA failed to do a proper job in responding to</p> <p>8 these two Citizen Petitions?</p> <p>9 MS. PARFITT: Objection.</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 Asked and answered.</p> <p>12 THE WITNESS: All I can do on</p> <p>13 this one, respectfully, is say, this</p> <p>14 process is one of the -- and this outcome</p> <p>15 is one of the reasons that I strongly</p> <p>16 support Congressional reform of the</p> <p>17 cosmetics regulatory process.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You don't know who at FDA was</p> <p>20 involved in responding to these Citizen Petitions,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. You don't know what resources they</p> <p>24 devoted to respond to these Citizen Petitions,</p>
<p style="text-align: right;">Page 163</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. My question was very specific and I</p> <p>3 don't think you answered it.</p> <p>4 My question was: Is it your opinion</p> <p>5 that FDA failed to do the job it was assigned to</p> <p>6 do by Congress in responding to these two Citizen</p> <p>7 Petitions?</p> <p>8 MS. PARFITT: Objection.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. It's whether you have that opinion.</p> <p>11 MS. PARFITT: Objection.</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 MS. PARFITT: Question was</p> <p>14 answered.</p> <p>15 THE WITNESS: Let me -- let</p> <p>16 me try to convey accurately what my</p> <p>17 opinion is.</p> <p>18 My opinion is that this letter</p> <p>19 is not exculpatory of Johnson &amp; Johnson.</p> <p>20 FDA issued a response to a Citizen's</p> <p>21 Petition within its authorities, and its</p> <p>22 response says what its response says.</p> <p>23 It does not in any way alter</p> <p>24 the legal obligations of Johnson &amp;</p>	<p style="text-align: right;">Page 165</p> <p>1 correct?</p> <p>2 A. I think we have a supportable</p> <p>3 inference that resource constraints in the</p> <p>4 cosmetic area make it very difficult for FDA to --</p> <p>5 to assess Citizen's Petitions and assess sua</p> <p>6 sponte actions that might be authorized by</p> <p>7 Congress but not facilitated.</p> <p>8 Q. My question, though, is very -- is</p> <p>9 specific to this Citizen Petition response.</p> <p>10 Do you know the resources that FDA</p> <p>11 devoted to respond to these two Citizen Petitions</p> <p>12 as reflected in Exhibit No. 7?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: I don't know</p> <p>15 the resources, but I do know, as -- as I</p> <p>16 imagine you do also, that the history of</p> <p>17 the Citizen's Petitions, Citizen's</p> <p>18 Petitions are supposed to generate a</p> <p>19 response within 180 days.</p> <p>20 And the, you know, earliest</p> <p>21 response to the 1994 petition was</p> <p>22 basically, we're kind of busy, we don't</p> <p>23 have a lot of resources, and we'll get</p> <p>24 back to you.</p>

<p style="text-align: right;">Page 166</p> <p>1 And then we have a 2008                  2 petition and then we have a 2014                  3 response, and I think simply from the                  4 time course you can very reasonably infer                  5 that resources are insufficient to deal                  6 with these as they should be dealt with.                  7 BY MR. HEGARTY:                  8 Q. Is it your opinion that FDA believes                  9 today that a warning with regard to the risk of                  10 ovarian cancer is needed on talcum powder                  11 products?                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: I think it is                  14 clear that the -- that pending changes in                  15 leadership or new statements from FDA                  16 leadership that FDA believes that                  17 cosmetics regulation needs to be                  18 improved, and which would support an                  19 inference that the things that FDA has                  20 been involved in with cosmetics                  21 regulation are things that they do not                  22 think are adequate to protect the public.                  23 BY MR. HEGARTY:                  24 Q. And my question is specific as it</p>	<p style="text-align: right;">Page 168</p> <p>1 obtained since the 1994 Workshop further suggests                  2 a health hazard and that additional work for                  3 possible action is needed."                  4 So FDA has obviously been concerned                  5 about this for a while. In terms of an FDA                  6 warning, again, the thing that -- one of the                  7 things that distinguishes cosmetic oversight from,                  8 say, drug oversight is that FDA's ability to                  9 require a warning is far less self-executing.                  10 FDA does not require -- does not                  11 directly regulate the label or labeling of a lot                  12 of aspects of cosmetics; and if FDA wishes to                  13 require a warning, it has legal authority to do                  14 so, but it has to do it through notice and comment                  15 rulemaking at significant expense and a                  16 significant degree of legal uncertainty.                  17 So, you know, I am willing to                  18 suggest that FDA institutionally sees some                  19 significant concerns about causal relationships                  20 between perineal talc and ovarian cancer, but the                  21 regulatory system is not set up for FDA to                  22 vindicate those concerns, which is another reason                  23 why your client should have.                  24 Q. You have not talked to anybody at</p>
<p style="text-align: right;">Page 167</p> <p>1 relates to talcum powder products and ovarian                  2 cancer risk.                  3 Is it your opinion that FDA believes                  4 that a warning is needed today on talcum powder                  5 products and ovarian cancer risk?                  6 DR. THOMPSON: Object to form.                  7 THE WITNESS: So this -- may                  8 I refer to a document we've previously                  9 discussed?                  10 BY MR. HEGARTY:                  11 Q. Does that answer the question?                  12 A. Yes.                  13 Q. Sure.                  14 A. So if we -- if we go back to -- or                  15 did you hand it back or do you still have it? The                  16 1998 FDA internal review. That document includes                  17 -- here it is. This one that we looked at                  18 (indicates).                  19 That document includes a statement                  20 upfront. Again, it's not a statement of FDA                  21 policy, but it is a statement specifically on talc                  22 that pointing out FDA's Workshop says:                  23 "Perineal talc has been linked to                  24 increased risk of ovarian cancer. Additional data</p>	<p style="text-align: right;">Page 169</p> <p>1 FDA with regard to talcum powder use or talcum                  2 powder products and ovarian cancer, correct?                  3 A. I look forward to doing so.                  4 Q. Well, have you talked to anybody?                  5 A. No.                  6 Q. Paragraph 39 of your report, which                  7 is on page 6, the second sentence refers states                  8 that:                  9 "Asbestos when present in talcum                  10 powder product is an adulterant because it is                  11 hazardous to human health."                  12 Do you see where I'm reading?                  13 A. I do.                  14 Q. One of the materials you cite there                  15 is a document, is an NIH document entitled                  16 "Asbestos Worker and Employer Guide to Hazards and                  17 Recommended Controls."                  18 Do you see that?                  19 A. I'm --                  20 DR. THOMPSON: What page are                  21 you on, please?                  22 MS. PARFITT: Page 6 of the                  23 report.                  24 THE WITNESS: Sorry. I'm not</p>

<p style="text-align: right;">Page 170</p> <p>1 seeing that particular --</p> <p>2 DR. THOMPSON: Okay.</p> <p>3 MS. PARFITT: Paragraph 39.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. Yeah, if you look at --</p> <p>6 A. I'm not seeing that particular</p> <p>7 paragraph.</p> <p>8 Q. -- 39 at the end, footnote 9 says</p> <p>9 NIOSH.</p> <p>10 A. It's got the NIOSH and OSHA</p> <p>11 material, which is where why the Material Safety</p> <p>12 Data Sheets get revised --</p> <p>13 Q. Right. That document --</p> <p>14 A. -- to give talc exposure.</p> <p>15 Q. I'm sorry.</p> <p>16 That document is "Workplace Exposure</p> <p>17 to Asbestos," correct?</p> <p>18 A. Yes.</p> <p>19 Q. Did you read that document?</p> <p>20 A. No. I read various things that</p> <p>21 referenced that document.</p> <p>22 Q. Do you understand that document is</p> <p>23 about occupational exposure to asbestos?</p> <p>24 A. I understand that document is about</p>	<p style="text-align: right;">Page 172</p> <p>1 workplace exposure documents, certainly.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. You're, of course, familiar with</p> <p>4 NIH, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you're familiar with the NCI,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And NCI is the federal government's</p> <p>10 primary health agency on cancer research, correct?</p> <p>11 A. I would have -- that's -- that's a</p> <p>12 strong statement, but for the federal government,</p> <p>13 yes.</p> <p>14 Q. Have you ever had any dealings with</p> <p>15 NCI?</p> <p>16 A. Institutionally, no. Indirectly, I</p> <p>17 have a very wide circle of contacts, and I serve</p> <p>18 on a number of advisory committees, and</p> <p>19 undoubtedly there's been overlap with -- with NCI</p> <p>20 over the years.</p> <p>21 Q. If you go back and look at this</p> <p>22 Exhibit No. 5, the literature materials we've been</p> <p>23 talking -- we were talking about earlier?</p> <p>24 A. Uh-huh.</p>
<p style="text-align: right;">Page 171</p> <p>1 occupational exposure to asbestos. I don't recall</p> <p>2 the details of all these documents, but I have</p> <p>3 noticed that several of the documents that discuss</p> <p>4 occupational exposure also at least have brief</p> <p>5 mention of nonoccupational exposure risks.</p> <p>6 Q. Do you know that that document does</p> <p>7 not discuss talcum powder use?</p> <p>8 A. I would -- I would have to -- I</p> <p>9 would have to review that document to confirm</p> <p>10 that; but, again, remember the assertion is about</p> <p>11 the dangers of asbestos. To the extent that</p> <p>12 asbestos is present in talcum powder, it is by</p> <p>13 FDA's own statement and by other sources</p> <p>14 conclusively an adulterant.</p> <p>15 Q. But you're not -- I'm sorry.</p> <p>16 A. It's not dose-dependent. It's not</p> <p>17 dose-dependent. It's not route-dependent. It is</p> <p>18 simply an adulterant.</p> <p>19 Q. But you understand that the support</p> <p>20 you're citing for that statement is a document</p> <p>21 that refers to "Workplace Exposure to Asbestos,"</p> <p>22 one of the supporting documents?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: I have seen</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. You look over at page 6 of that</p> <p>2 document. Tell me when you're at page 6.</p> <p>3 A. I'm at page 6.</p> <p>4 Q. You refer in that document to "NCI</p> <p>5 Snapshot of Ovarian Cancer." It's the very top of</p> <p>6 the page.</p> <p>7 You see that?</p> <p>8 A. Yes, and it doesn't have the</p> <p>9 snapshot exactly. I have -- I have an NCI</p> <p>10 document in front of me that is actually a D</p> <p>11 exhibit. It's a defense exhibit.</p> <p>12 Q. We're going to get to that.</p> <p>13 But in terms of the document you</p> <p>14 reference in your materials, it's this "Snapshot</p> <p>15 of Ovarian Cancer," right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you read that document?</p> <p>18 A. It was made available. I don't</p> <p>19 recall I read your defense exhibit word for word.</p> <p>20 Q. You don't cite that defense exhibit</p> <p>21 in your materials?</p> <p>22 A. You're right.</p> <p>23 Q. Did you look at it in preparing your</p> <p>24 report?</p>

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1 A. Did I look at the?

2 Q. The document -- well, did you look

3 at the NCI PDQ that you reference as a defense

4 exhibit in preparing your report?

5 A. It may have been brought to my

6 attention. Oh, yes. I did look at it in

7 preparing my report, yes.

8 Q. And why didn't you reference it?

9 A. I don't know. If that -- if that

10 was an oversight, I apologize.

11 Q. You agree you didn't even reference

12 it in the materials that you reviewed, right?

13 MS. PARFITT: Objection.

14 Form.

15 THE WITNESS: Again, I don't

16 -- I would have to verify that but...

17 MR. HEGARTY: I'll mark as

18 Exhibit No. 8 what I think is the same --

19 THE WITNESS: I saw -- I saw

20 a reference to -- to that defense exhibit

21 perhaps in this other more general

22 document, and I specifically requested

23 the defense exhibit.

24 (Document marked for

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1 identification as Sage Exhibit 8.)

2 BY MR. HEGARTY:

3 Q. I've marked as Exhibit 8 I think is

4 the same document you've been looking at. It's

5 the --

6 A. Yes.

7 Q. -- July 8, 2021 NCI Physician Data

8 Query.

9 Is this the same document you were

10 referencing before?

11 A. Yes. Yours is printed two-sided so

12 it seems smaller.

13 Q. Again, then you think -- strike

14 that.

15 Your testimony is that you did

16 review this document prior to completing your

17 expert report; is that correct?

18 A. I believe so.

19 DR. THOMPSON: Object to form.

20 THE WITNESS: I believe so.

21 BY MR. HEGARTY:

22 Q. And you also agree you make no

23 reference to it anywhere in your expert report,

24 right?

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1 A. I will take your word for that.

2 Q. Do you recall referencing it in the

3 body of the report?

4 A. I don't think I did.

5 Q. And do you recall any -- do you see

6 any reference in the list of materials that you

7 reviewed to this document?

8 A. No. I do remember it well and I've

9 looked at it several times, and I have, you know,

10 I have evaluated it and did not think it warranted

11 direct inclusion in the report.

12 Q. So you didn't -- is it your

13 testimony that you do not believe this document,

14 the NCI PDQ and what it says about talc and

15 ovarian cancer, is a relevant document to your

16 opinions in this case?

17 A. I believe --

18 DR. THOMPSON: Object to form.

19 THE WITNESS: I believe it is

20 relevant and I considered it. I did not

21 think it was sufficiently important to

22 reference directly. Be happy to discuss

23 why.

24 BY MR. HEGARTY:

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1 Q. Well, did you find this document on

2 your own or did plaintiffs' counsel provide it to

3 you?

4 A. I asked for this document because I

5 believed it was either -- either I saw it or it

6 was referenced in that Facts About Talc document

7 collection that we were talking about before.

8 Because I remember specifically asking, as I was

9 asking for things that appeared to support the

10 defense's arguments, I asked specifically about

11 the NCI document, and that's how I got the NCI

12 document.

13 Q. Prior to reading something about the

14 NCI PDQ document, Exhibit No. 8, had you ever been

15 aware that NCI puts out Physician Data Query

16 documents like this?

17 A. In passing, probably, but I wouldn't

18 have had a need for them in clinical practice.

19 Q. If you turn over to page 19 of 20 in

20 this document and the pages that are at the

21 bottom --

22 A. Yes.

23 Q. -- that reference 19 of 20, it says

24 that this PDQ in the -- let me back up.

<p style="text-align: right;">Page 178</p> <p>1 Under the purpose of this summary at                  2 the top, it says that this is a summary for health                  3 professionals -- let me read it specifically.                  4 "This PDQ cancer information summary                  5 for health professionals provides comprehensive                  6 peer-reviewed evidence-based information about                  7 ovarian, fallopian tube, and primary peritoneal                  8 cancer."                  9 Did I read that correctly?                  10 A. Peritoneal cancer prevention but...                  11 Q. Peritoneal cancer prevention.                  12 And it goes on to say:                  13 "It is intended as a resource to                  14 inform and assist clinicians who care for cancer                  15 patients."                  16 Correct?                  17 A. Correct.                  18 Q. Then it goes down under the section                  19 Reviewers and Updates that says:                  20 "This summary is reviewed regularly                  21 and updated as necessary by the PDQ Screening and                  22 Prevention Editorial Board, which editorial                  23 independent of the National Cancer Institute                  24 (NCI)."</p>	<p style="text-align: right;">Page 180</p> <p>1 20, under section --                  2 A. Hold on.                  3 Q. I'm sorry.                  4 A. I have to go back to that. Yeah.                  5 Q. Under the section Factored with                  6 Inadequate Evidence of Association Risk of                  7 Ovarian, Fallopian Tube, and Primary Peritoneal                  8 Cancer, they specifically refer to perineal talc                  9 exposure, correct?                  10 A. Correct.                  11 Q. The first line of that summary says:                  12 "The weight of evidence does not                  13 support an association between perineal talc                  14 exposure and an increased risk of ovarian cancer."                  15 Correct?                  16 A. Yes, that's their view expressed in                  17 this particular --                  18 Q. And they --                  19 A. -- summary.                  20 Q. They don't -- they say there's not                  21 even association in this statement, correct?                  22 A. Now --                  23 DR. THOMPSON: Object to form.                  24 THE WITNESS: -- again you are</p>
<p style="text-align: right;">Page 179</p> <p>1 Correct?                  2 A. Yes.                  3 Q. Then it goes on to say:                  4 "This summary reflects an                  5 independent review of literature and does not                  6 represent a policy statement of NCI or the                  7 National Institutes of Health (NIH)."                  8 Correct?                  9 A. Correct.                  10 Q. Then it goes on to describe that:                  11 "The board members review recently                  12 published articles each month to determine whether                  13 an article should" and then it describes what                  14 their -- they can do with it, with the article,                  15 discussing it, citing the text, replacing it with                  16 an updated article, correct?                  17 A. Certainly. It reminds me very much                  18 of loosely electronic scientific American medicine                  19 chapters that were published for many years and I                  20 subscribed to. I don't subscribe anymore, but the                  21 notion is that you want to have some current                  22 clinical guidance and you provide a mechanism                  23 for -- for updates periodically.                  24 Q. Then if we turn over to page 13 of</p>	<p style="text-align: right;">Page 181</p> <p>1 correctly saying. They say in slightly                  2 stylized form, the weight of evidence                  3 does not support an association and that                  4 results from the various case-controlled                  5 and cohort studies are inconsistent, and                  6 then they argue the points back and                  7 forth.                  8 It is -- this is to me                  9 representative of much of the discussion                  10 that I have seen in other sources. There                  11 are, you know, several studies here that                  12 they cite that show confidence intervals                  13 that are all above 1.                  14 Their, you know, so, again,                  15 their conclusion and their categorization                  16 is based on what they consider                  17 inconsistencies and how they weight                  18 particular sort of dose-response style                  19 associations, or lack thereof.                  20 There's nothing in this that                  21 is sort of new information to me beyond                  22 the other studies and syntheses that I                  23 have -- I've read and from the language                  24 you yourself quoted.</p>



<p style="text-align: right;">Page 182</p> <p>1 This is an editorial exercise                  2 with an NIH-funded publication resource.                  3 It is not an official clinical guideline.                  4 It is not an official policy statement.                  5 One could speculate if you ask                  6 the authors of this what they would                  7 advise their own patients regarding                  8 perineal application of talcum powder, I                  9 don't know it would be that "don't worry                  10 about it" is the response that you'd get.                  11 This is exactly the sort of                  12 material that I think is highly relevant,                  13 but is also, first of all, embedded in --                  14 in a whole set of professional                  15 relationships and traditions between                  16 clinical physician practice and                  17 government bodies that is really                  18 tangential to my opinions about a                  19 manufacturer's self-regulatory                  20 obligations for cosmetics.                  21 BY MR. HEGARTY:                  22 Q. Assume for purposes of my                  23 question -- and it's a hypothetical -- that this                  24 statement is true that the weight of evidence does</p>	<p style="text-align: right;">Page 184</p> <p>1 information it does not currently                  2 provide.                  3 BY MR. HEGARTY:                  4 Q. And what would that information be                  5 if this statement is true?                  6 A. At a minimum, the statement -- the                  7 statement that safety has not been determined.                  8 Because, again, this is, you know, a weight of                  9 evidence, inconsistencies, and things that they                  10 cite certainly do not substantiate the safety                  11 of -- of talcum powder products.                  12 Moreover, you know, the exact                  13 contents of talcum powder products are not really                  14 dealt with in this particular report, and I don't                  15 really know what assumptions they've made.                  16 Q. Have you told me in your responses                  17 to the last few of my questions why you don't --                  18 did not cite this document in your report?                  19 A. I --                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: Yes. I've told                  22 you that I reviewed it, and I did not                  23 find that it added information in ways                  24 that would modify my opinion.</p>
<p style="text-align: right;">Page 183</p> <p>1 not support an association between perineal talc                  2 exposure and an increased risk of ovarian cancer.                  3 So assume that's true.                  4 Would it still be your opinion that                  5 talcum powder is unsafe?                  6 DR. THOMPSON: Object to form.                  7 THE WITNESS: It would still                  8 be my opinion that Johnson &amp; Johnson has                  9 not complied with its regulatory                  10 obligations regarding information, and                  11 there's a whole lot of ambiguities in                  12 this particular statement.                  13 BY MR. HEGARTY:                  14 Q. Again, assume for purposes of my                  15 question that this -- that the statement I just                  16 read to you is true.                  17 Is it still your opinion that talcum                  18 powder products should contain a warning about the                  19 risk of ovarian cancer?                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: If this                  22 statement were true as written, it is                  23 still my opinion that Johnson &amp; Johnson                  24 is required to provide consumers with</p>	<p style="text-align: right;">Page 185</p> <p>1 BY MR. HEGARTY:                  2 Q. Is that what your standard was for                  3 citing material is whether it would modify your                  4 opinions?                  5 DR. THOMPSON: Object to form.                  6 THE WITNESS: One's -- one                  7 formulates one's opinions and modifies                  8 one's opinions in light of new evidence.                  9 If this is a piece of evidence                  10 I'm being presented with, if it is                  11 information that I think needs to be                  12 conveyed to the audience of my report on                  13 its own, I might include it.                  14 But in terms of, is it                  15 altering my then present analysis, if it                  16 doesn't alter it, I have no other reason                  17 to cite it, and that is simply a Bayesian                  18 approach to formulating and modifying                  19 conclusions.                  20 If you're suggesting that                  21 somehow I had decided in advance what my                  22 conclusions are, I would strongly                  23 disagree.                  24 BY MR. HEGARTY:</p>

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1 Q. Well, I think the reader will  
 2 interpret that, but let me point this out.  
 3 You did cite to IARC in your report,  
 4 correct?  
 5 A. Yes.  
 6 Q. And what it said about talcum powder  
 7 use and ovarian cancer, correct?  
 8 A. Yes.  
 9 Q. You did cite to FDA in your report  
 10 and what it said about talcum powder use and  
 11 ovarian cancer, correct?  
 12 A. Yes.  
 13 Q. Those -- and you do cite to NIOSH  
 14 and what it says about asbestos exposure and risk,  
 15 correct?  
 16 A. Indirectly in the footnote that you  
 17 read. I don't -- I don't emphasize a discussion  
 18 of the occupational hazards here, though I -- I do  
 19 think that the NIOSH conclusions and the way in  
 20 which the talc mining companies responded to them  
 21 in terms of worker protection are informative in  
 22 this case.  
 23 Q. So you cite to IARC, you cite to  
 24 FDA, you cite to NIOSH, but you don't cite to NCI,

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1 correct?  
 2 A. Again --  
 3 DR. THOMPSON: Object to form.  
 4 THE WITNESS: Again, I really  
 5 have to be clear that this is a  
 6 NCI-supported journal that follows a  
 7 perfectly reasonable clinical update  
 8 process. It is not a statement of the  
 9 NCI, and the language that you read  
 10 confirmed that.  
 11 BY MR. HEGARTY:  
 12 Q. So it's your opinion that a reader  
 13 looking at your report would not be interested in  
 14 what the NCI PDQ has to say about talcum powder  
 15 use and ovarian cancer?  
 16 MS. PARFITT: Objection.  
 17 DR. THOMPSON: Object to form.  
 18 THE WITNESS: It's my opinion  
 19 that I might be misleading a reader of my  
 20 report to suggest that an NCI -- that  
 21 this particular NCI document is a policy  
 22 statement of NCI, which it's not.  
 23 BY MR. HEGARTY:  
 24 Q. You cite to other material in your

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1 report that are not policy statements, right?  
 2 A. Yes.  
 3 Q. You cite to medical literature,  
 4 right?  
 5 A. Yes.  
 6 Q. Not a policy statement, is it?  
 7 A. No.  
 8 Q. So this document, though, you chose,  
 9 unlike some other articles that you cited, not to  
 10 cite, correct?  
 11 DR. THOMPSON: Object to form.  
 12 THE WITNESS: I didn't  
 13 affirmatively decide not to cite it. It  
 14 did not rise to the level where I felt  
 15 induced to cite it.  
 16 MR. HEGARTY: Let me show you  
 17 what I've marked as Exhibit No. 9.  
 18 (Document marked for  
 19 identification as Sage Exhibit 9.)  
 20 BY MR. HEGARTY:  
 21 Q. This is the PDQ Screening and  
 22 Prevention Editorial Board for the PDQ that we  
 23 marked as Exhibit No. 8.  
 24 Have you seen this list of board

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1 members?  
 2 A. I have not. I have a medical school  
 3 classmate on the list.  
 4 Q. Who is that?  
 5 A. Joann Elmore.  
 6 Q. She's got a Master of Public Health,  
 7 right?  
 8 A. Yes, she does.  
 9 Q. You do not have a Master of Public  
 10 Health, right?  
 11 A. I do not.  
 12 Q. And Joann Elmore, do you respect her  
 13 as an epidemiologist?  
 14 A. As an epidemiologist? I would have  
 15 to go back and talk to her in a few years, but I  
 16 would have to go back and see what her work is.  
 17 But, yes, I respect her. I respect everybody on  
 18 this list.  
 19 But that's not the same thing as  
 20 saying that this particular statement of the  
 21 literature is in any sense definitive, in any  
 22 sense a policy statement, and I think on its own  
 23 terms an informed reader would -- would not simply  
 24 take their categorization at face value.

<p>Page 190</p> <p>1 As I said, I suspect that if you                  2 asked the individuals who actually wrote this                  3 article what they would advise their own patients,                  4 I don't think "don't worry about it" would be the                  5 answer from all of them, but that's just my                  6 professional opinion.                  7 Q. Do you know any of the other                  8 individuals on this list?                  9 A. Hmm.                  10 (Reviews document.)                  11 I suspect I know who David                  12 Ransohoff's father was but, no.                  13 Q. Did you contact any of these                  14 individuals about the NCI PDQ?                  15 A. No.                  16 Q. Did you even look at this editorial                  17 board before preparing your report?                  18 A. No.                  19 Q. And the board members, as it says in                  20 this document, represents -- represent the field                  21 of oncology, cancer prevention, cancer screening,                  22 hematology, radiology, urology, statistics,                  23 epidemiology, and economics, correct?                  24 A. That's what it says.</p> <p>Page 191</p> <p>1 Q. You don't represent any of those                  2 fields, correct?                  3 DR. THOMPSON: Object to form.                  4 THE WITNESS: I certainly                  5 have expertise in cancer prevention from                  6 the work I've done. I have expertise in                  7 cancer screening from the work I've done.                  8 I have some statistical expertise, some                  9 epidemiological expertise, and a whole                  10 lot of economic expertise.                  11 BY MR. HEGARTY:                  12 Q. Okay.                  13 A. Do I practice any of these as my                  14 dominant profession? No.                  15 Q. Is it your contention that the                  16 editorial board members did not properly review                  17 the medical literature to come to the statements                  18 that they set out in the PDQ we marked as Exhibit                  19 No. 8?                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: I have no such                  22 opinion, and I think it is tangential to                  23 my opinions in this case.                  24 BY MR. HEGARTY:</p>	<p>Page 192</p> <p>1 Q. Do you know who the CDC is?                  2 A. I do.                  3 Q. Do you know who the SGO is, the                  4 Society of Gynecologic Oncologists?                  5 A. I never heard it with the acronym.                  6 I've heard of the Society of Gynecologic                  7 Oncologists.                  8 Q. Do you know who ACOG is, the                  9 American College of --                  10 A. I know who ACOG --                  11 Q. -- Obstetricians and Gynecologists?                  12 A. Sorry to interrupt you.                  13 Yes, I know who ACOG is.                  14 Q. Did you review their list of risk                  15 factors for ovarian cancer?                  16 A. It's possible I did. I don't -- I                  17 don't recall. If I -- if I had been looking                  18 casually in my very initial investigations before                  19 deciding whether or not to offer an opinion in                  20 this case, ACOG would have been the household name                  21 for me, and if I went to one place, that's where I                  22 would have gone. But I don't know that I found                  23 anything.                  24 Q. Do you know that ACOG does not list</p> <p>Page 193</p> <p>1 talc as a risk factor for ovarian cancer?                  2 DR. THOMPSON: Object to form.                  3 THE WITNESS: Again, I can't                  4 recall. All of this, you know, is in                  5 some sense tangential to, you know, the                  6 fundamental questions in my opinion.                  7 BY MR. HEGARTY:                  8 Q. Before being hired by the                  9 plaintiffs' lawyers to work on this case, you had                  10 never written anything about talc, correct?                  11 A. Correct.                  12 Q. You never commented on talc,                  13 correct?                  14 A. Correct.                  15 Q. Before being hired by plaintiffs'                  16 lawyers in this case, you had never written                  17 anything about any cosmetic product, correct?                  18 DR. THOMPSON: Object to form.                  19 THE WITNESS: Anything that                  20 was solely a cosmetic product?                  21 BY MR. HEGARTY:                  22 Q. Correct.                  23 A. No.                  24 Q. Before being hired to testify on</p>
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1 behalf of plaintiffs in this case, you had never  
 2 written anything about asbestos, correct?  
 3 DR. THOMPSON: Object to form.  
 4 THE WITNESS: That's probably  
 5 correct. I'd have to go see. I suspect  
 6 that in articles that I've written, I've  
 7 made references or comparative references  
 8 to asbestos litigation. It would be  
 9 unavoidable given how much regulatory  
 10 health and safety work I've done.  
 11 BY MR. HEGARTY:  
 12 Q. I think we did a search for your  
 13 name and asbestos and didn't come up with  
 14 anything.  
 15 A. Good to know. Thank you. (Laugh).  
 16 Q. Do you recall ever talking about  
 17 asbestos in any article you've ever written?  
 18 A. I don't.  
 19 DR. THOMPSON: Object to form.  
 20 THE WITNESS: I'm pretty sure  
 21 I've done it in passing because, as I  
 22 said, you know, if you're writing about  
 23 sort of major product-related personal  
 24 injury litigation, chances are you made

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1 reference to asbestos. But if you can't  
 2 find it, then it may not exist.  
 3 BY MR. HEGARTY:  
 4 Q. Have you ever written anything in  
 5 the published literature about fragrance?  
 6 A. No.  
 7 Q. How about heavy metals?  
 8 A. No.  
 9 Q. Have you ever written anything in  
 10 the published literature about the manufacturers  
 11 who make cosmetic products? As it relates to  
 12 their manufacture of cosmetic.  
 13 A. Oh. No.  
 14 DR. THOMPSON: Object to form.  
 15 BY MR. HEGARTY:  
 16 Q. Have you ever written anything on  
 17 the development, manufacture, marketing, or sale  
 18 of any cosmetic product?  
 19 DR. THOMPSON: Object to form.  
 20 THE WITNESS: Not that I can  
 21 recall. I have to answer it that way  
 22 because when we're talking about  
 23 marketing activities, I write a whole lot  
 24 about relationship between marketing

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1 activities and disclosure obligations,  
 2 and also about First Amendment claims  
 3 involved in government regulation of  
 4 information.  
 5 BY MR. HEGARTY:  
 6 Q. And my question is specifically as  
 7 it relates to a cosmetic product.  
 8 A. Again, it's not that I can recall in  
 9 the sense it would have been in passing.  
 10 Q. Have you ever written anything in  
 11 the published medical literature or the literature  
 12 -- let me -- let me ask it a different way.  
 13 Have you ever published an article  
 14 or anything, any published document that talks  
 15 about ovarian cancer?  
 16 A. Hmm.  
 17 DR. THOMPSON: Object to form.  
 18 THE WITNESS: Again, not that  
 19 I can recall and probably not.  
 20 BY MR. HEGARTY:  
 21 Q. Have you ever spoken to an audience  
 22 about talcum powder?  
 23 A. No.  
 24 Q. Have you ever spoken to an audience

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1 about asbestos?  
 2 A. No.  
 3 Q. Have you ever spoken to an audience  
 4 about heavy metals?  
 5 A. No.  
 6 Q. Fragrances?  
 7 A. I have never spoken to an audience  
 8 about fragrances.  
 9 Q. Have you ever spoken to an audience  
 10 about ovarian cancer?  
 11 A. In passing, yes.  
 12 Q. How have you done so in passing?  
 13 A. About -- so I would use ovarian  
 14 cancer often as an example for my regulatory  
 15 theory classes on risk framing issues, and  
 16 specifically telling the story of Gilda Radner's  
 17 ovarian cancer and the misperception that many --  
 18 that the general public took away from that that  
 19 ovarian cancer was somehow preferentially a  
 20 disease of younger women when it's actually a  
 21 disease of older women. So it would have been a  
 22 common anecdote I would use.  
 23 I actually teach a whole lot about  
 24 cancer prevention and -- and cancer screening

<p style="text-align: right;">Page 198</p> <p>1 tests in my regulatory theory classes every time I</p> <p>2 teach them.</p> <p>3 Q. Have you ever spoken to an audience</p> <p>4 about the causes of ovarian cancer?</p> <p>5 A. No.</p> <p>6 Q. Have you ever taught any courses</p> <p>7 where talc was discussed?</p> <p>8 A. No.</p> <p>9 Q. Where asbestos was part of the</p> <p>10 course?</p> <p>11 A. Again, not that I can recall, but</p> <p>12 it's a common example of, you know, I think</p> <p>13 probably in discussing Stephen Jay Gould's</p> <p>14 non-asbestos mesothelioma.</p> <p>15 Q. You're not an oncologist, correct?</p> <p>16 A. Correct.</p> <p>17 Q. You're not a gynecologist, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You're not an expert in the overall</p> <p>20 field of ovarian cancer, correct?</p> <p>21 A. I'm not a clinical or molecular</p> <p>22 expert, cellular expert in ovarian cancer, no.</p> <p>23 Q. You're not an expert on the risk</p> <p>24 factors for ovarian cancer, correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 but ovarian cancer, no.</p> <p>2 Q. You never treated a patient for</p> <p>3 ovarian cancer, correct?</p> <p>4 A. I'm not sure of that, but it</p> <p>5 wouldn't have been the primary diagnosis. I</p> <p>6 probably have treated a patient who had prior --</p> <p>7 previously been diagnosed with ovarian cancer.</p> <p>8 Q. My question, though, is: Have you</p> <p>9 ever treated a patient for her ovarian cancer?</p> <p>10 A. No.</p> <p>11 Q. Have you ever treated a patient for</p> <p>12 mesothelioma?</p> <p>13 A. No.</p> <p>14 Q. Have you ever treated a patient for</p> <p>15 peritoneal mesothelioma?</p> <p>16 A. No.</p> <p>17 Q. Have you ever diagnosed a patient</p> <p>18 with an asbestos-related disease?</p> <p>19 A. That's really interesting.</p> <p>20 I did a lot of work at the Palo Alto</p> <p>21 VA hospital, and it was a World War II era patient</p> <p>22 base.</p> <p>23 Not that I can recall.</p> <p>24 Q. Do you know what asbestosis is?</p>
<p style="text-align: right;">Page 199</p> <p>1 A. I evaluate risk factors in -- for</p> <p>2 cancer in a lot of the work I do. So I haven't</p> <p>3 applied that expertise to ovarian cancer; but,</p> <p>4 again, I reiterate that I'm not offering a medical</p> <p>5 opinion or epidemiological opinion on causation.</p> <p>6 Q. Can you cite for me the risk factors</p> <p>7 for serous invasive ovarian cancer?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: Off the top of</p> <p>10 my head, no. I, you know, can suggest</p> <p>11 that some of them have to do with parity.</p> <p>12 Some of them have to do with various</p> <p>13 exposures. Some of them probably have to</p> <p>14 do with family history.</p> <p>15 But I would have to look them</p> <p>16 up, as I would look up risk factors for</p> <p>17 pretty much anything.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You never performed any research on</p> <p>20 ovarian cancer, correct?</p> <p>21 A. No.</p> <p>22 Q. You've never been the doctor who</p> <p>23 diagnosed a patient's ovarian cancer, correct?</p> <p>24 A. I have diagnosed patients' cancers,</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what pleural plaques</p> <p>3 are?</p> <p>4 A. I can -- I can imagine what pleural</p> <p>5 plaques are. I don't -- don't know if I've used</p> <p>6 that term in a clinical setting.</p> <p>7 Q. Do you know what ferruginous bodies</p> <p>8 are?</p> <p>9 A. Apparently not because I'll need you</p> <p>10 to --</p> <p>11 Q. Ferruginous bodies. Do you not?</p> <p>12 A. Ferruginous? I do not.</p> <p>13 Q. If a woman needed to be evaluated</p> <p>14 for a possible case of ovarian cancer, no one</p> <p>15 would refer them to you, right?</p> <p>16 A. That would be correct.</p> <p>17 Q. If someone did, you would refer them</p> <p>18 to someone else, right?</p> <p>19 A. With alacrity.</p> <p>20 Q. No one has ever sought out your</p> <p>21 consultation regarding a patient with ovarian</p> <p>22 cancer, correct?</p> <p>23 A. No one -- as we've established</p> <p>24 repeated -- repeatedly, I do not have an active</p>



<p style="text-align: right;">Page 202</p> <p>1 clinical practice. I do not have sort of subfield                  2 specialization in gynecology or obstetrics or in                  3 oncology; but in the course of my teaching and                  4 research and scholarly work, I encounter all of                  5 these diseases and tests, symptoms, risk factors                  6 and, frankly, access to and cost of treatment.                  7 Q. You never came to the opinion that                  8 asbestos caused any patient's ovarian cancer,                  9 correct?                  10 A. In this -- in this instance, I will                  11 rely on multiple statements about asbestos as a                  12 risk factor for ovarian cancer, as for other                  13 cancers.                  14 Q. No. My question is very specific.                  15 You never came to the opinion that                  16 asbestos caused any particular patient's ovarian                  17 cancer, correct?                  18 A. That would follow directly from not                  19 having treated a patient for ovarian cancer.                  20 Q. You've never discussed the risk                  21 factors of ovarian cancer with a patient, correct?                  22 A. Correct.                  23 Q. You've never talked to a patient                  24 about talcum powder use, correct?</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. When is the last time you went to a                  2 meeting of a medical society?                  3 A. Probably about three years ago and                  4 sat in on a whole variety of interesting                  5 radiologic sessions, in addition to the one that I                  6 spoke out on on policy issues. I have a basic                  7 principle that I don't just go in and out when I                  8 speak, and I always sit and listen to things.                  9 Q. Have you ever been involved in any                  10 published article related to the female                  11 reproductive tract?                  12 A. No.                  13 DR. THOMPSON: Object to form.                  14 BY MR. HEGARTY:                  15 Q. In fact, you never published a                  16 medical article, correct?                  17 A. Not correct. I have published                  18 medical articles.                  19 Q. You published medical article about                  20 the clinical practice of medicine?                  21 A. Yes. When I -- when I was in                  22 medical school, I was lead author on articles                  23 about intensive care practice and about urologic                  24 practice. They emphasized the outcomes and the</p>
<p style="text-align: right;">Page 203</p> <p>1 A. Not -- not that I can recall.                  2 Q. Have you ever recommended to any                  3 physician that they advise against talcum powder                  4 use?                  5 A. No.                  6 Q. Have you ever told anybody to stop                  7 using talcum powder?                  8 A. I certainly would now.                  9 Q. My question is: Prior to today,                  10 have you ever told any person to stop using talcum                  11 powder?                  12 A. No. I have evaluated mentally my                  13 own brief talcum powder use wondering.                  14 Q. You don't belong to any medical                  15 organizations currently, do you?                  16 A. Yes.                  17 Q. What medical organization do you                  18 belong to?                  19 A. I'm an AMA member and have been                  20 forever. I'm trying to think what else that would                  21 qualify as a medical organization. But, I mean,                  22 again, I'm a -- I'm an elected member of the                  23 National Academy of Medicine. So I think I have                  24 medical bona fides.</p>	<p style="text-align: right;">Page 205</p> <p>1 cost-related care choices. They weren't                  2 generating clinical practice guidelines, if you                  3 will; but, yes, they are -- they were                  4 fundamentally clinical articles.                  5 Q. And none of those articles had                  6 anything to do with the reproductive tract, female                  7 reproductive tract, correct?                  8 A. That's correct. I mean, obviously                  9 the urologic article had to do with male                  10 reproductive tract or reproductive organs.                  11 Q. You're not an expert in talc,                  12 correct?                  13 DR. THOMPSON: Object to form.                  14 THE WITNESS: Could you ask                  15 that in a way that I know what -- what                  16 piece of the discipline you're interested                  17 in?                  18 BY MR. HEGARTY:                  19 Q. Well, would you call yourself an                  20 expert in talcum powder?                  21 A. No.                  22 DR. THOMPSON: Object to form.                  23 THE WITNESS: No.                  24 BY MR. HEGARTY:</p>

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1 Q. Would you call yourself an expert in  
 2 asbestos?  
 3 DR. THOMPSON: Object to form.  
 4 THE WITNESS: No.  
 5 BY MR. HEGARTY:  
 6 Q. Can you name the 6 types of  
 7 regulated asbestos?  
 8 DR. THOMPSON: Object to form.  
 9 THE WITNESS: Offhand, no. I  
 10 can pronounce them, I believe, you know.  
 11 BY MR. HEGARTY:  
 12 Q. Can you tell me the difference  
 13 between an amphibole and a serpentine form of  
 14 asbestos?  
 15 DR. THOMPSON: Object to form.  
 16 THE WITNESS:  
 17 Mineralogically, no. I know those are  
 18 two of the forms.  
 19 BY MR. HEGARTY:  
 20 Q. You know what the most commercially  
 21 used asbestos was?  
 22 DR. THOMPSON: Object to form.  
 23 THE WITNESS: I have read --  
 24 read that. I don't recall.

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1 BY MR. HEGARTY:  
 2 Q. Did you analyze the toxicities of  
 3 asbestos across the various forms?  
 4 DR. THOMPSON: Object to form.  
 5 THE WITNESS: No, but nothing  
 6 in my opinion relates to my having done  
 7 any of this personally.  
 8 BY MR. HEGARTY:  
 9 Q. You're not a toxicologist, correct?  
 10 A. I am -- correct.  
 11 Q. You're not an expert in fragrances,  
 12 correct?  
 13 A. Correct.  
 14 Q. You're not a genesis -- geneticist,  
 15 correct?  
 16 A. I'm not a geneticist.  
 17 Q. Not a mineralogist, correct?  
 18 A. I took two geology classes in  
 19 college, but I'm not a mineralogist.  
 20 Q. You've had no formal epidemiologic  
 21 training, correct?  
 22 A. I've had some epidemiologic training  
 23 in medical school as, you know, consequence to  
 24 receiving a medical school.

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1 Q. Have you ever conducted an  
 2 epidemiologic study?  
 3 A. A lot of the research that I do uses  
 4 the quantitative techniques that are common in  
 5 epidemiology. I haven't done -- I haven't been an  
 6 author or coauthor of something that is sort of a  
 7 primary epidemiological study.  
 8 Q. Have you ever published a review of  
 9 epidemiologic evidence?  
 10 A. No.  
 11 Q. You're not an expert on the testing  
 12 of -- of talc for the presence of asbestos,  
 13 correct?  
 14 DR. THOMPSON: Object to form.  
 15 THE WITNESS: Correct.  
 16 BY MR. HEGARTY:  
 17 Q. You're not an expert in geology,  
 18 correct?  
 19 A. Again, I have preparation and  
 20 interest in geology. So there are areas of  
 21 geology that I have far more than lay credentials  
 22 with respect to.  
 23 Q. Would you call yourself a geologist?  
 24 A. No.

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1 Q. You're not an industrial hygienist,  
 2 correct?  
 3 A. Correct, but, again, there is  
 4 considerable overlap; but I have experience with  
 5 OSHA regulations and practices.  
 6 Q. You're not an expert in Johnson's  
 7 Baby Powder, are you?  
 8 DR. THOMPSON: Object to form.  
 9 THE WITNESS: I believe it  
 10 was applied to me in early childhood but,  
 11 no.  
 12 BY MR. HEGARTY:  
 13 Q. Do you know where Johnson & Johnson  
 14 has mined its talc for its Johnson's Baby Powder  
 15 over the years?  
 16 A. I have read that in connection  
 17 with -- with these issues. I had no prior  
 18 knowledge of that.  
 19 Q. Do you know where Johnson & Johnson  
 20 currently obtains its talcum powder for its baby  
 21 powder products?  
 22 A. For the products it doesn't sell  
 23 here? I don't know.  
 24 Q. Well, you understand that Johnson's

<p>Page 210</p> <p>1 Baby Powder is sold outside the United States and</p> <p>2 Canada --</p> <p>3 A. Correct.</p> <p>4 Q. -- correct?</p> <p>5 A. Correct.</p> <p>6 Q. Do you know where Johnson &amp; Johnson</p> <p>7 sources its talc for those products?</p> <p>8 A. Again, I read this in passing in the</p> <p>9 materials here.</p> <p>10 Q. Do you know what Johnson &amp; Johnson's</p> <p>11 testing protocols are for testing talc?</p> <p>12 A. I have read in the course of</p> <p>13 preparing this report a lot regarding testing</p> <p>14 protocols and history of testing protocols and the</p> <p>15 different methods and the different thresholds for</p> <p>16 detection, for sensitivities, you know, going --</p> <p>17 going back to the CIR J4-1 standard.</p> <p>18 This has all been very interesting</p> <p>19 to read and I've learned a lot about it, you know.</p> <p>20 So I -- I am glad to have that knowledge now and</p> <p>21 to use that as part of, you know, the material</p> <p>22 I've considered -- I've considered for these</p> <p>23 opinions.</p> <p>24 Before -- before becoming involved</p>	<p>Page 212</p> <p>1 don't think I've ever spoken at one at the request</p> <p>2 of a plaintiff's lawyer.</p> <p>3 Q. Have you ever been personally</p> <p>4 involved in litigation?</p> <p>5 A. No.</p> <p>6 Q. Have you ever had any disciplinary</p> <p>7 action initiated against you?</p> <p>8 A. No.</p> <p>9 MR. HEGARTY: You want to go</p> <p>10 ahead and take that break.</p> <p>11 DR. THOMPSON: Sure.</p> <p>12 MR. HEGARTY: Take a break.</p> <p>13 Let's go off the record.</p> <p>14 (Whereupon, at 12:03 p.m., a</p> <p>15 luncheon recess was taken.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 211</p> <p>1 in this case, no, I had no knowledge about how</p> <p>2 Johnson &amp; Johnson tested for asbestos.</p> <p>3 Q. And do you still -- do you currently</p> <p>4 today, as of today, do you know the protocols that</p> <p>5 Johnson &amp; Johnson uses in testing its baby powder</p> <p>6 for the presence of asbestos?</p> <p>7 A. Again, I've seen references to these</p> <p>8 that were interesting to read. I couldn't --</p> <p>9 couldn't tell you.</p> <p>10 Q. With regard to ovarian cancer, are</p> <p>11 you able to cite for me the subtypes besides</p> <p>12 serous?</p> <p>13 A. Again, no. I would look them up.</p> <p>14 That would be true for most cancers.</p> <p>15 Q. Do you know what the incidence rate</p> <p>16 is of ovarian cancer in this country?</p> <p>17 A. I would only be guessing. Again,</p> <p>18 this is sort of a fundamental aspect of expertise</p> <p>19 is you don't really memorize a lot of things. You</p> <p>20 look things up.</p> <p>21 Q. Have you ever spoken at a seminar at</p> <p>22 the request of a plaintiff's lawyer?</p> <p>23 A. Hmm. I've spoken at many</p> <p>24 conferences at the request of defense lawyers. I</p>	<p>Page 213</p> <p>1 AFTERNOON SESSION</p> <p>2 (12:52 p.m.)</p> <p>3 WILLIAM M. SAGE, MD, JD</p> <p>4 called for continued examination and, having been</p> <p>5 previously duly sworn, was examined and testified</p> <p>6 further as follows:</p> <p>7 EXAMINATION (CONTINUED).</p> <p>8 MR. HEGARTY: We're back on</p> <p>9 the record.</p> <p>10 (Document marked for</p> <p>11 identification as Sage Exhibit 10.)</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Dr. Sage, over the break there was a</p> <p>14 copy made of your current curriculum vitae, which</p> <p>15 I marked as Exhibit No. 10.</p> <p>16 Would you tell me if Exhibit No. 10</p> <p>17 is a copy of your current curriculum vitae?</p> <p>18 A. I will look to see if it has the</p> <p>19 current visiting positions on it.</p> <p>20 Well, now we have the problem that</p> <p>21 it only has the odd numbered pages in it.</p> <p>22 MS. PARFITT: Oh, great.</p> <p>23 Well, that was --</p> <p>24 MR. HEGARTY: All right.</p>

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1 Well, we'll -- we'll go ahead and replace  
 2 it at a break.  
 3 THE WITNESS: That could be a  
 4 yes.  
 5 BY MR. HEGARTY:  
 6 Q. Okay.  
 7 A. Would it help you to work with the  
 8 one I have?  
 9 Q. No. We'll go ahead. We need to  
 10 mark it for the -- for the record. The next break  
 11 we'll get to it.  
 12 Now, you mentioned the notice of  
 13 deposition.  
 14 Do you have a copy of that?  
 15 A. I do.  
 16 Q. What is the exhibit sticker on  
 17 there?  
 18 A. The exhibit sticker is 6.  
 19 Q. No. 6.  
 20 You said you now had a chance to  
 21 read the 18 paragraphs in that exhibit?  
 22 A. I have.  
 23 Q. Did you provide to your counsel for  
 24 purposes of that notice all the materials that you

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1 have that are described in those paragraphs?  
 2 A. Yes, absolutely.  
 3 DR. THOMPSON: And --  
 4 THE WITNESS: I had -- I had  
 5 gone through this orally. I just had not  
 6 seen the document before.  
 7 MR. HEGARTY: And Dr. Thompson  
 8 had something to say.  
 9 DR. THOMPSON: And just for  
 10 the record, we filed objections to the  
 11 production request.  
 12 MR. HEGARTY: And you've --  
 13 this is directed to Dr. Thompson.  
 14 You produced the documents  
 15 that you considered were not  
 16 objectionable to the deposition notice?  
 17 DR. THOMPSON: Correct.  
 18 BY MR. HEGARTY:  
 19 Q. Doctor, I want to talk in more  
 20 detail about your expert witness report.  
 21 So I'm going to start walking  
 22 through the paragraphs. So you might want to have  
 23 that available. That's previously been marked as  
 24 Exhibit No. 4. Although I know you have your own

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1 a copy in front of you.  
 2 So do you have your report in front  
 3 of you?  
 4 A. I do.  
 5 Q. If we look at paragraph 10 of your  
 6 report, you say in the middle of the paragraph as  
 7 far as what you -- your research included and what  
 8 your review included were "relevant corporate  
 9 documents requested of counsel."  
 10 Do you see that phrase?  
 11 A. Yes.  
 12 Q. Are you saying that you specifically  
 13 asked for certain documents that were requested of  
 14 counsel for plaintiff?  
 15 A. I'm saying that apart from Facts  
 16 About Talc and other easily accessible corporate  
 17 documents from public websites, I didn't have  
 18 access to corporate documents from the litigation  
 19 that were relevant to the report; and I asked for  
 20 as many of those as was feasible to be produced to  
 21 me.  
 22 Q. And as best as you can, can you  
 23 reconstruct for me the language you were -- you  
 24 would have -- that you used in making that

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1 request?  
 2 A. I would have asked for -- sure, I  
 3 can tell you. Let me categorize that for you.  
 4 So category 1, as I've said  
 5 repeatedly, was making sure I had both sides of  
 6 the litigation story. So if I had been receiving,  
 7 say, scientific studies that were generally  
 8 supportive of the plaintiffs' case, I wanted to  
 9 know what was generally supportive of the  
 10 defendants' case, etc., etc., and the big picture  
 11 of the litigation.  
 12 Point 2 would be information related  
 13 to Johnson & Johnson's regulatory compliance, or  
 14 attitudes towards regulatory compliance, or  
 15 contacts between the sort of drug side of the  
 16 business in a regulatory sense and the people who  
 17 were responsible for decisions regarding  
 18 cosmetics.  
 19 And point 3 would have been because  
 20 so much of my report is about the informational  
 21 environment and informational obligations, you  
 22 know, the sort of marketing strategy, branding  
 23 strategies, changes in that, those sorts of  
 24 things. Some of which were provided to me in the

<p style="text-align: right;">Page 218</p> <p>1 form of deposition transcripts. Some of which may                  2 have been, you know, exhibits to depositions. I                  3 didn't track them in a formal way.                  4 Q. As you mentioned earlier, though,                  5 you don't know the methods by which the attorneys                  6 for the plaintiffs went about selecting documents                  7 in response to those requests, correct?                  8 A. Correct.                  9 Q. And you indicated previously that                  10 you have not done any type of quality control                  11 analysis yourself as to whether you did get all                  12 the documents that you were thinking you would get                  13 pursuant to these requests, correct?                  14 DR. THOMPSON: Object to form.                  15 THE WITNESS: I felt I had                  16 the quality control analysis I needed to                  17 do, which really had to do with issues                  18 that appeared to be incompletely handled                  19 or issues that seemed to be not                  20 documented at all.                  21 I didn't feel like I was, you                  22 know, looking for some type of smoking                  23 gun documents. Not the type of report                  24 that I'm producing.</p>	<p style="text-align: right;">Page 220</p> <p>1 end of the day I had everything I needed.                  2 Q. In terms of the materials you do                  3 have in front of you today, did you put any notes                  4 or make any markings on any of them?                  5 A. In preparation for the deposition,                  6 yes. In preparation of the report, no.                  7 Q. I'm talking about specifically on                  8 materials you have in front of you.                  9 Did you put any handwritten notes                  10 into them?                  11 A. What I'm saying is -- so my own                  12 report, in preparation for talking to you today,                  13 as you can see I have, you know, underlined things                  14 as reminders to myself --                  15 Q. Okay.                  16 A. -- in particular areas. I have not                  17 annotated any of the other materials.                  18 Q. We're on, I think, Exhibit No. 11.                  19 We'll designate for purposes of the deposition as                  20 Exhibit No. 11 the notebook we have in front of                  21 you. So we'll -- why don't we go ahead and make a                  22 copy of that after the deposition, okay?                  23 A. Sure.                  24 (Notebook marked for</p>
<p style="text-align: right;">Page 219</p> <p>1 BY MR. HEGARTY:                  2 Q. Did you do any sort of formal task                  3 where you intentionally looked for documents                  4 yourself that thought you should have to see                  5 whether you did get those?                  6 Do you follow my question where you                  7 did some sort of quantitative or qualitative                  8 analysis of the documents you were -- you received                  9 to make sure that the methods used captured what                  10 you were expecting to get?                  11 A. I follow your question.                  12 I actually found that the deposition                  13 transcripts were in some ways a good guide to the                  14 full scope of available information. I didn't try                  15 to document them. I sort of made a practice of                  16 not doing marks and highlights and notes on                  17 things. It didn't seem practical to do so as                  18 opposed to just drafting the report as, you know,                  19 in sections and leaving areas of it for further                  20 development.                  21 But I was -- I was quite                  22 comfortable. This was, again, you know, this                  23 skill of litigation is unfamiliar to me, and I was                  24 working as best I could; but I felt like at the</p>	<p style="text-align: right;">Page 221</p> <p>1 identification as Sage Exhibit 11.)                  2 BY MR. HEGARTY:                  3 Q. And that would include any mark --                  4 the copies of any -- the copy of your report that                  5 has some markings of yours on it, right?                  6 A. Yeah.                  7 Q. Okay. I want to next look at                  8 paragraph 11 of your report. You say in paragraph                  9 11 or paragraph 11 you reference -- you make a                  10 reference to highly profitable cosmetic -- "a                  11 highly profitable cosmetic industry."                  12 Can you cite for me any information                  13 you have on the profits of companies making                  14 cosmetics over the 80 years you talk about in                  15 paragraph 11?                  16 A. So -- so if -- if I may just in                  17 terms of how I organized the report because it                  18 would facilitate the conversation.                  19 The bolded unnumbered statements in                  20 the discussion are how I organized the key points                  21 of the report. Those are the major categories,                  22 major insights, major conclusions and opinions. I                  23 just used the paragraph numbering sort of for                  24 convenience for the elaboration of those major</p>



<p style="text-align: right;">Page 222</p> <p>1 points.</p> <p>2 I asked whether any particular</p> <p>3 format was required by the court or by convention,</p> <p>4 and I was told no. So this was the approach that</p> <p>5 I -- that I adopted. Just so in case if you</p> <p>6 wanted to talk about the major points, they'll be</p> <p>7 in bold but not in numbered paragraphs.</p> <p>8 With respect to profitability and</p> <p>9 change in the industry, this statement was a</p> <p>10 general statement consistent with statements that</p> <p>11 were made in sort of the FDA's own documents over</p> <p>12 the last couple of years talking about the need</p> <p>13 for a more structured approach to cosmetic</p> <p>14 regulation.</p> <p>15 Q. So ultimately the reason I ask that</p> <p>16 question is there's no citation to authority at</p> <p>17 the end of this paragraph.</p> <p>18 So my question is: What authority</p> <p>19 did you -- do you rely on for the statement --</p> <p>20 statements in paragraph 11?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: Again, I will</p> <p>23 reiterate that there is no standard</p> <p>24 citation protocol that I'm aware of for</p>	<p style="text-align: right;">Page 224</p> <p>1 published in a 1995 article by Carr.</p> <p>2 Do you recall that?</p> <p>3 A. If you could refresh my --</p> <p>4 Q. Sure.</p> <p>5 A. -- recollection on that one.</p> <p>6 MR. HEGARTY: I'm going to</p> <p>7 show you what I've marked as Exhibit</p> <p>8 No. 12.</p> <p>9 (Document marked for</p> <p>10 identification as Sage Exhibit 12.)</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. This is a 1995 article author C.</p> <p>13 Jeffrey Carr in the Journal of Regulatory</p> <p>14 Toxicology and Pharmacology that summarizes a 1994</p> <p>15 Workshop attended by FDA personnel, industry</p> <p>16 personnel, scientists, and academics.</p> <p>17 Do you recall reading this article?</p> <p>18 It is referenced in your materials.</p> <p>19 A. Yeah, that's what I was just going</p> <p>20 to take a look to see where -- where it is</p> <p>21 referenced.</p> <p>22 It is referenced.</p> <p>23 Q. So my question --</p> <p>24 A. Yes, I recall --</p>
<p style="text-align: right;">Page 223</p> <p>1 this type of report.</p> <p>2 This is a statement that</p> <p>3 synthesizes things that I have read from</p> <p>4 the FDA and from other commentators. All</p> <p>5 of which has been produced to you as</p> <p>6 material to be considered.</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. In making that statement, you did</p> <p>9 not look at any specific profitability statements</p> <p>10 by any company, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Turning next to paragraph 13, you</p> <p>13 refer to a list of 100, as you call, dangerous --</p> <p>14 as is quoted "dangerous, deceptive, or worthless</p> <p>15 products."</p> <p>16 Talc was not on that list of hundred</p> <p>17 products, correct?</p> <p>18 A. I don't believe it was. This is a</p> <p>19 historical reference, and I certainly wouldn't be</p> <p>20 stating that talc was. I don't know why it would</p> <p>21 have been.</p> <p>22 Q. You have referenced in your report</p> <p>23 and you made reference earlier to an FDA Workshop</p> <p>24 in 1994 that ultimately whose results were</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. -- do you recall reading this?</p> <p>2 A. Yes, I recall seeing this.</p> <p>3 Q. And that article reported on a</p> <p>4 two-day meeting that looked at the safety of talc</p> <p>5 in 1994, correct?</p> <p>6 A. Correct.</p> <p>7 Q. You were not at this meeting, right?</p> <p>8 A. Correct.</p> <p>9 Q. If you look at page 213 of this</p> <p>10 article.</p> <p>11 A. Yes.</p> <p>12 Q. On the -- in the right-hand column,</p> <p>13 first full paragraph beginning with the word --</p> <p>14 the name "Dr. Gilbertson."</p> <p>15 Do you see that paragraph?</p> <p>16 A. Yes.</p> <p>17 Q. The last line of that paragraph</p> <p>18 says:</p> <p>19 "In their joint evaluation, talc was</p> <p>20 proven to be among the safest of all consumer</p> <p>21 products."</p> <p>22 Do you see where I'm reading?</p> <p>23 A. I do. That language jumps out at me</p> <p>24 as -- as language that is often included in</p>

<p style="text-align: right;">Page 226</p> <p>1 Johnson &amp; Johnson's marketing materials.</p> <p>2 Q. But do you dispute that as of the</p> <p>3 time of this meeting, 1994, that talc has proven</p> <p>4 to be among the safest of all consumer products?</p> <p>5 DR. THOMPSON: Objection.</p> <p>6 Form.</p> <p>7 THE WITNESS: I have no</p> <p>8 particular reason to credit or doubt this</p> <p>9 particular statement in this particular</p> <p>10 journal at this time.</p> <p>11 It -- as a statement, it</p> <p>12 carries no particular authority for me,</p> <p>13 but I have no basis for doubting the</p> <p>14 sincerity of the people who wrote it.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. You agree that this article is</p> <p>17 relevant to the analysis -- your analysis in your</p> <p>18 report, correct?</p> <p>19 DR. THOMPSON: Objection.</p> <p>20 Form.</p> <p>21 THE WITNESS: I would -- I</p> <p>22 would agree in -- I would agree -- well,</p> <p>23 let me -- let me go back and begin that</p> <p>24 answer again.</p>	<p style="text-align: right;">Page 228</p> <p>1 interesting for its value as scientific</p> <p>2 truth.</p> <p>3 I tend to look at all of this</p> <p>4 type of material in any regulatory</p> <p>5 context as telling a story. It's usually</p> <p>6 a very rich story about how regulators or</p> <p>7 potential regulators and regulated</p> <p>8 industries interact, including in such</p> <p>9 workshops.</p> <p>10 So it is interesting and</p> <p>11 relevant, but it is not going to be a</p> <p>12 major aspect of my conclusion or reliance</p> <p>13 regarding the safety of talc.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. If you would next turn over to page</p> <p>16 215 and look at the last line in the left-hand</p> <p>17 column carried over to the top of the right-hand</p> <p>18 column. In particular, the sentence reads:</p> <p>19 "Following the many issues raised by</p> <p>20 all presenters, the ensuing discussion generally</p> <p>21 agreed that, while some weak association between</p> <p>22 talc and ovarian tumors has been reported, it was</p> <p>23 not sufficient warning for concern."</p> <p>24 Do you see where I'm reading?</p>
<p style="text-align: right;">Page 227</p> <p>1 I would reiterate that I'm not</p> <p>2 offering an opinion as to causation. If</p> <p>3 you are pointing to this as, at the time,</p> <p>4 a casual synthesis of international</p> <p>5 standards with respect to the regulation</p> <p>6 of talc in consumer products, I would</p> <p>7 say, yes, it's relevant.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. You do -- you do address in your</p> <p>10 report within the context of your focus safety of</p> <p>11 talcum powder, correct?</p> <p>12 A. Yes.</p> <p>13 Q. The statement I just read concerns</p> <p>14 the safety of talcum powder, correct?</p> <p>15 DR. THOMPSON: Objection.</p> <p>16 Form.</p> <p>17 THE WITNESS: Yes. It is in</p> <p>18 an executive summary. It carries exactly</p> <p>19 the weight that an executive summary of a</p> <p>20 conference proceeding carries for me in</p> <p>21 all my work, which is, it is relevant.</p> <p>22 It is interesting. It may be more</p> <p>23 interesting for its presence in this</p> <p>24 particular document than it is</p>	<p style="text-align: right;">Page 229</p> <p>1 A. I do.</p> <p>2 Q. Again, that is a statement that's</p> <p>3 relevant to the safety of talc as of the time of</p> <p>4 this workshop, correct?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: Not</p> <p>7 necessarily. It's -- it's a summary of</p> <p>8 attendees' impressions of a particular</p> <p>9 workshop conversation. It carries the</p> <p>10 way that one would give that, which is</p> <p>11 that at least in the opinion of the</p> <p>12 person writing this summary I don't</p> <p>13 know -- and we could, I guess, look up,</p> <p>14 you know -- the discussion was generally</p> <p>15 -- generally not -- the discussions were</p> <p>16 generally unconcerned about talc safety</p> <p>17 at the time, but it's the discussions at</p> <p>18 a conference.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. You said the discussions were</p> <p>21 generally unconcerned, or what did you say? I</p> <p>22 didn't hear you.</p> <p>23 A. Yes. I was actually giving you the</p> <p>24 answer that I suspect you wanted in that instance</p>

<p style="text-align: right;">Page 230</p> <p>1 is, yes, for the -- as reported by this observer                  2 and published in this unreviewed executive summary                  3 of one conference that I'm sure was, you know,                  4 convened with -- with decent scientific                  5 intentions, the discussions appeared to not be                  6 terribly concerned about toxicity.                  7 Q. You say "unreviewed."                  8 You understand this is peer-reviewed                  9 publication, right?                  10 A. Executive --                  11 DR. THOMPSON: Objection.                  12 THE WITNESS: -- summary --                  13 DR. THOMPSON: Whoa.                  14 Objection.                  15 THE WITNESS: In my                  16 experience, executive summaries of                  17 conference proceedings are not                  18 peer-reviewed.                  19 BY MR. HEGARTY:                  20 Q. Do you know with regard to this                  21 document specifically whether it was                  22 peer-reviewed?                  23 A. I do not know, but it would be my                  24 professional view that anybody reading this</p>	<p style="text-align: right;">Page 232</p> <p>1 dispute that as of the time this publication was                  2 made, 1995, concerning a meeting in 1994, that                  3 these were proper conclusions to draw from the                  4 evidence, the two conclusions we read from this                  5 paper?                  6 DR. THOMPSON: Objection.                  7 Form.                  8 THE WITNESS: These                  9 conclusions strike me as telling an                  10 incomplete story, and I wouldn't attach                  11 any particular scientific weight to                  12 those, again, in the way that I would                  13 sort of read a regulatory history and                  14 make sort of expert judgments about a                  15 regulatory process.                  16 I would say that as far as                  17 this particular conference goes, it                  18 appears that the discussion did not                  19 result in inducing a sudden regulatory                  20 change. This was a conference, as I --                  21 as I recall, jointly sponsored by the FDA                  22 by industry and by an International                  23 Society of Regulatory Toxicology and                  24 Pharmacology, which I'm afraid I don't</p>
<p style="text-align: right;">Page 231</p> <p>1 summary would not expect it to have been reviewed.                  2 Q. Are you aware that there's a                  3 transcript of the two-day proceedings?                  4 A. I hope so, yes. I am not aware of                  5 that but...                  6 Q. Did you make a request for such a                  7 transcript?                  8 A. No.                  9 Q. You don't cite to this -- this                  10 article substantively in your expert report,                  11 correct?                  12 A. Correct.                  13 Q. Okay. From your analysis in this                  14 case, do you dispute that as of the time of this                  15 conference the statements that we looked at on                  16 these two different pages?                  17 DR. THOMPSON: Object to form.                  18 THE WITNESS: I don't think I                  19 understood that question.                  20 BY MR. HEGARTY:                  21 Q. Sure.                  22 In your analysis of what you did for                  23 purposes of this case, do you dispute -- or from                  24 your analysis that you did in this case, do you</p>	<p style="text-align: right;">Page 233</p> <p>1 know anything about.                  2 And, you know, in terms of                  3 whether this particular topic -- whether                  4 this particular topic, you know,                  5 promoted, you know, sort of prompted                  6 action that would dislodge the then                  7 prevalent regulatory standards, it                  8 appears not.                  9 But that's more what I would                  10 read this for. I don't -- I don't read                  11 this document as, you know, authoritative                  12 science. It's a conference proceeding.                  13 BY MR. HEGARTY:                  14 Q. Let's look at paragraph 15 of your                  15 report.                  16 In that paragraph, you say a central                  17 aspect of the federal cosmetics regulations are                  18 "reliance on manufacturer and industry                  19 self-regulation."                  20 Where in the regulations for                  21 cosmetics is the phrase "self-regulation"?                  22 A. It is clear from FDA's website. It                  23 is clear from every major address that has been                  24 given either by the agency or, for that matter, by</p>

<p style="text-align: right;">Page 234</p> <p>1 representatives of the cosmetic industry that the                  2 principal form of governance of cosmetics is                  3 self-governance assigned to industry often in some                  4 fairly -- I should say the manufacturers and                  5 sellers -- often in very specific ways.                  6 But, no, the word "self-regulation"                  7 doesn't appear in the statute or the regulation.                  8 It does, interestingly, appear in the remarks and                  9 the characterization of the regulatory process                  10 from both the, you know, from the FDA and from the                  11 CFTA or successor organizations.                  12 This does not seem to be something                  13 that is seriously contested by any party.                  14 Q. You also state that FDA "lacks                  15 routine authority to assure the safety of cosmetic                  16 products or ingredients."                  17 That's not true, is it?                  18 DR. THOMPSON: Object to form.                  19 THE WITNESS: That is true.                  20 They do -- they do not have routine                  21 authority. There are foundational                  22 pillars of food, drug, and cosmetic                  23 regulation in terms of adulteration and                  24 misbranding. There are some subsidiary</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Yes.                  2 Q. FDA may seek a seizure of cosmetics                  3 not in compliance with the law, correct?                  4 A. Yes.                  5 Q. FDA may initiate criminal action                  6 against a person violating the law, correct?                  7 A. Through the Department of Justice,                  8 yes.                  9 Q. FDA can also issue a warning letter                  10 if they think a product is adulterated or                  11 misbranded, correct?                  12 A. Yes.                  13 Q. FDA can also request that the                  14 manufacturer recall a product, right?                  15 A. The recall, a voluntary recall,                  16 indeed, the FDA can request it. I could request                  17 it just as much.                  18 Q. If FDA asks for a recall of the                  19 product, most manufacturers comply with that                  20 request, correct?                  21 A. Correct.                  22 DR. THOMPSON: Objection.                  23 BY MR. HEGARTY:                  24 Q. FDA can also issue something called</p>
<p style="text-align: right;">Page 235</p> <p>1 authorities.                  2 But comparing FDA's drug                  3 regulatory regime to what it would have                  4 to do in order to make a significant                  5 effort to -- to verify the safety of                  6 cosmetics to prevent injuries, or even to                  7 address injuries that would occur, is not                  8 what I would call routine authority.                  9 BY MR. HEGARTY:                  10 Q. Well, FDA can issue regulations that                  11 require there to be a warning on a cosmetic,                  12 correct?                  13 A. Indeed.                  14 Q. If FDA makes a determination that a                  15 cosmetic product is adulterated or misbranded FDA                  16 can take action, correct?                  17 A. Yes.                  18 Q. FDA can work through the Department                  19 of Justice to remove adulterated or misbranded                  20 products from the market, correct?                  21 A. Yes.                  22 Q. FDA may request a federal court to                  23 issue a restraining order against the sale of a                  24 cosmetic, correct?</p>	<p style="text-align: right;">Page 237</p> <p>1 a guidance document, right?                  2 A. Yes.                  3 Q. And a guidance document is, like it                  4 sounds, it sets forth FDA's thinking about a type                  5 of product or an ingredient, correct?                  6 A. Yes. The resources available to do                  7 this in the cosmetics domain are a tiny fraction                  8 of the resource available to issue guidance                  9 documents in, say, drug or device domains.                  10 Q. And guidance document, while not                  11 having the force of regulation, but it does tell                  12 the industry very clearly what it should do in                  13 regard to an ingredient, including what the                  14 contents of a warning should be, correct?                  15 A. Not necessarily. The -- the FDA                  16 could issue a regulation that requires a warning.                  17 That would go through an extensive procedure                  18 regarding both issuance and evaluation and would                  19 be subject to both formal and informal challenges.                  20 All of this -- all of these                  21 statements with which you've had me agree, some to                  22 having residual authority to having some strong                  23 pillars of obligation under the 1938 Act, which                  24 really I will, you know, convey as my expert</p>

<p style="text-align: right;">Page 238</p> <p>1 opinion are essentially informational obligations.                  2 And there is a lot really -- and they really fall                  3 exclusively on the manufacturers with very                  4 little -- with very little advanced safeguards,                  5 with very little continuing oversight, and with                  6 almost no self-executing recourse.                  7 I would characterize the sort of                  8 post-1938 cosmetic regime as very similar to the                  9 pre-1938 drug regime.                  10 Q. Are you aware of situations where                  11 FDA has issued a guidance document regarding                  12 warnings as it relates to a cosmetic?                  13 A. I believe I have seen those. None                  14 is immediately springing to mind, but, yes.                  15 Q. In particular, do you recall FDA                  16 issuing a guidance document regarding certain                  17 warnings that should be used on a product called                  18 alpha hydroxy acids? Do you recall seeing it?                  19 A. I recall seeing it. I don't recall                  20 the details right now.                  21 Q. But using a guidance document in                  22 this sense is FDA's way of telling an industry                  23 that a warning should be put on a label without                  24 going through the entire process of issuing a</p>	<p style="text-align: right;">Page 240</p> <p>1 And I think this is something                  2 that both FDA and the industry                  3 acknowledge and each of them alters their                  4 feelings about it from time to time based                  5 on familiar and predictable factors, and                  6 that's one reason we have another major                  7 bill in Congress at the moment.                  8 BY MR. HEGARTY:                  9 Q. The FDA has not issued any guidance                  10 document with regard to talcum powder products,                  11 correct?                  12 A. I have not seen any -- any final                  13 guidance documents. You've shown me, you know,                  14 responses to Citizen's Petitions. I have shown                  15 you internal -- internal evaluations from the                  16 1990s.                  17 Q. And you would expect that FDA knows                  18 about lawsuits brought over the use of talcum                  19 powder products, correct?                  20 A. Of course.                  21 Q. And FDA knows about allegations of                  22 finding asbestos in talc, right?                  23 DR. THOMPSON: Object to form.                  24 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 239</p> <p>1 regulation, correct?                  2 DR. THOMPSON: Object to form.                  3 THE WITNESS: If I may -- if                  4 I may make an analogy.                  5 The Federal Trade Commission                  6 engages in competition advocacy all the                  7 time where it sends letters to state                  8 legislatures and to state regulators and                  9 to other parties suggesting that                  10 something they're doing is                  11 anticompetitive, attempting to influence                  12 them without the extreme measure of                  13 filing an administrative action or a                  14 federal lawsuit for a preliminary                  15 injunction.                  16 I do not think that FDA's                  17 authority over cosmetics is that much                  18 greater than FTC's authority over                  19 potentially anticompetitive, you know,                  20 state laws and practices.                  21 Yes, it carries a lot of                  22 weight. It will be taken seriously.                  23 Sometimes it will be acted on, but the                  24 whole point is, it's not self-executing.</p>	<p style="text-align: right;">Page 241</p> <p>1 BY MR. HEGARTY:                  2 Q. FDA knows about epidemiology?                  3 A. FDA has found -- let me supplement.                  4 I'm sorry to interrupt.                  5 FDA has found asbestos in talc and                  6 has requested voluntary recalls that have been                  7 complied with by your client and others.                  8 Q. And we'll get to that.                  9 FDA knows about epidemiologic                  10 studies and toxicology studies involving talc and                  11 ovarian cancer, correct?                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: Yes. I mean,                  14 this -- we are kind of                  15 anthropomorphasizing FDA a little bit                  16 here. I mean, we are -- FDA's cosmetic                  17 oversight function is an office within a                  18 Center that also deals with food safety.                  19 And in terms of rising to the                  20 level where FDA will expend resources                  21 given its relatively limited and -- and                  22 tentative regulatory authorities, you                  23 know, I don't really know how to say what                  24 FDA knows.</p>



<p>Page 242</p> <p>1 FDA may know a lot of things</p> <p>2 in that it's on notice, but there may be</p> <p>3 many obstacles to FDA action.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. FDA has never issued a regulation</p> <p>6 requiring that talcum powder products contain a</p> <p>7 warning about the risk of ovarian cancer, correct?</p> <p>8 A. Correct.</p> <p>9 Q. FDA has never declared talc-based</p> <p>10 slide patterns to be adulterated or misbranded,</p> <p>11 correct?</p> <p>12 MS. PARFITT: Objection.</p> <p>13 Form.</p> <p>14 THE WITNESS: Correct.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. FDA has never --</p> <p>17 A. I should -- may I correct that</p> <p>18 statement?</p> <p>19 Q. Sure.</p> <p>20 A. So in connection with finding</p> <p>21 asbestos in talcum powder products, FDA has</p> <p>22 stated, if not formalized, a conclusion that those</p> <p>23 products are adulterated.</p> <p>24 Q. Well, there's a particular</p>	<p>Page 244</p> <p>1 correct?</p> <p>2 A. Exact --</p> <p>3 DR. THOMPSON: Objection.</p> <p>4 Form.</p> <p>5 THE WITNESS: I exactly</p> <p>6 agree, but that is my point. These are</p> <p>7 the two pillars of FDA authority.</p> <p>8 Because there is so little other</p> <p>9 authority conferred on FDA on the</p> <p>10 cosmetic side of the FDCA and such that,</p> <p>11 indeed, if FDA is committed to reaching a</p> <p>12 result in case of something like asbestos</p> <p>13 being found in talcum-based baby powder,</p> <p>14 yes, it will make those findings because</p> <p>15 that's how it goes to court and get the</p> <p>16 results it seeks.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You're aware that FDA has never</p> <p>19 declared Johnson &amp; Johnson talcum powder product</p> <p>20 as being adulterated or misbranded?</p> <p>21 DR. THOMPSON: Objection.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. You know that, right?</p> <p>24 DR. THOMPSON: Object to form.</p>
<p>Page 243</p> <p>1 formalized finding or statement that FDA makes if</p> <p>2 it finds a product adulterated or misbranded,</p> <p>3 correct?</p> <p>4 A. It makes such statements in</p> <p>5 anticipation of a judicial procedure that would</p> <p>6 result in the outcome it wants. If it can obtain</p> <p>7 that outcome less formally, it will not go to</p> <p>8 those lengths.</p> <p>9 Q. FDA has never made the statement</p> <p>10 that any talcum powder product manufactured by</p> <p>11 Johnson &amp; Johnson is adulterated or misbranded --</p> <p>12 DR. THOMPSON: Objection.</p> <p>13 Form.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. -- correct?</p> <p>16 A. I'm not sure of that insofar as the</p> <p>17 2019 voluntary recall was -- was made with a clear</p> <p>18 signal from the FDA that an unrecalled product</p> <p>19 would be considered adulterated and further steps</p> <p>20 would be taken. That was certainly my -- my</p> <p>21 reading of what -- of the documents that I saw.</p> <p>22 Q. You know that the terms</p> <p>23 "adulterated" and "misbranded" are terms of art</p> <p>24 that FDA must use in order to take further action,</p>	<p>Page 245</p> <p>1 THE WITNESS: Again, I would</p> <p>2 like to know what the statements were</p> <p>3 made in 2019. I've read this, without --</p> <p>4 without reviewing those materials.</p> <p>5 Because I know that there were statements</p> <p>6 made that asbestos by the FDA or by FDA</p> <p>7 senior officials that asbestos in talcum</p> <p>8 powder would be an adulterant.</p> <p>9 Did they -- did the FDA make a</p> <p>10 formal declaration? I don't believe they</p> <p>11 did.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Has FDA ever issued a guidance</p> <p>14 document suggesting that products containing talc</p> <p>15 have a warning on them regarding ovarian cancer?</p> <p>16 A. Not to my knowledge.</p> <p>17 Q. If you look at paragraph 17 of your</p> <p>18 report, you say in paragraph 17 that "FDA itself</p> <p>19 recognizes its limitations in effectively</p> <p>20 regulating cosmetics."</p> <p>21 And those are your words, not FDA's</p> <p>22 words, correct?</p> <p>23 A. In paragraph 18, all of the quoted</p> <p>24 testimony, which is what continues to paragraph 17</p>

<p style="text-align: right;">Page 246</p> <p>1 thoughts, are FDA's words.</p> <p>2 Q. My question is specifically as it</p> <p>3 relates to 17.</p> <p>4 You cannot cite for me anyone from</p> <p>5 FDA stating that it has limitations -- using the</p> <p>6 words you use "limitations effectively regulating</p> <p>7 cosmetics"?</p> <p>8 A. Both the Susan -- the Susan Mayne</p> <p>9 testimony here, various statements from my</p> <p>10 acquaintance, Scott Gottlieb, as commissioner have</p> <p>11 all been, you know, in -- consistent with that</p> <p>12 statement.</p> <p>13 Q. Well, let's talk about what you say</p> <p>14 in paragraph 18 where you purport to provide</p> <p>15 relevant selected excerpts of the testimony of</p> <p>16 Susan Mayne, and I disagree that you did that and</p> <p>17 I'll show you why I disagree that you did that.</p> <p>18 And let me ask you first.</p> <p>19 Is it your methodology -- was it</p> <p>20 your methodology in your report to just cite</p> <p>21 portions of a document that help your subjective</p> <p>22 review, your subjective view and not give the</p> <p>23 reader an objective summary?</p> <p>24 DR. THOMPSON: Objection.</p>	<p style="text-align: right;">Page 248</p> <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 13.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. And the first statement I want to go</p> <p>5 to that you left out of your report is over on</p> <p>6 page 1 at the bottom, and in particular,</p> <p>7 Ms. Mayne's testimony in this document that you</p> <p>8 did not cite says:</p> <p>9 "We believe that most cosmetics on</p> <p>10 the market of the United States are indeed safe,</p> <p>11 and in our experience, most firms are responsible</p> <p>12 actors - they care about consumer safety and the</p> <p>13 reputation of their brands, and in those rare</p> <p>14 cases when safety issues do arise, many firms work</p> <p>15 with us cooperatively to address them."</p> <p>16 You didn't include that statement,</p> <p>17 did you?</p> <p>18 A. I completely -- I think that is a</p> <p>19 very well-crafted statement. I saw no reason to</p> <p>20 include that in this part of my report.</p> <p>21 Q. The next statement you didn't</p> <p>22 include is the one that is right after that:</p> <p>23 "We also understand that most</p> <p>24 ingredients used in cosmetic products have been</p>
<p style="text-align: right;">Page 247</p> <p>1 Form.</p> <p>2 THE WITNESS: The answer to</p> <p>3 that accusation is, of course not. The</p> <p>4 elaborate -- the elaboration is that my</p> <p>5 point is the FDA recognizes its</p> <p>6 limitations.</p> <p>7 I would also comment that no</p> <p>8 head of an agency stands up and gives a</p> <p>9 blanket condemnation of her or his own</p> <p>10 work. It's simply not done.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Well, there are portions of</p> <p>13 Ms. Mayne's testimony that are relevant that you</p> <p>14 didn't tell the reader, aren't there?</p> <p>15 MS. PARFITT: Objection.</p> <p>16 Form.</p> <p>17 DR. THOMPSON: Objection.</p> <p>18 Form.</p> <p>19 THE WITNESS: If you would</p> <p>20 like to show me something, which I think</p> <p>21 you would.</p> <p>22 MR. HEGARTY: I'll show you.</p> <p>23 I marked next as Exhibit No. 13 the</p> <p>24 statement you cited from Susan Mayne.</p>	<p style="text-align: right;">Page 249</p> <p>1 used in cosmetics for many decades, and we are not</p> <p>2 aware of safety concerns regarding most</p> <p>3 ingredients."</p> <p>4 You didn't include that statement?</p> <p>5 A. I did not.</p> <p>6 Q. If you look over to page 4 at the</p> <p>7 bottom of that page, second to last paragraph.</p> <p>8 "FDA evaluates concerns about</p> <p>9 ingredients or products based on currently</p> <p>10 available science and data, much of which is</p> <p>11 publicly available as FDA does not have authority</p> <p>12 to require companies to provide it with safety,</p> <p>13 compositional and other relevant information about</p> <p>14 cosmetics. FDA also supports and conducts</p> <p>15 research related to cosmetics safety to support</p> <p>16 our regulatory activities, as allowed by our</p> <p>17 resources. What we have safety concerns about</p> <p>18 ingredients we will act swiftly to inform and</p> <p>19 advise consumers of any identified public health</p> <p>20 risks."</p> <p>21 You did not include that statement</p> <p>22 in your report, did you?</p> <p>23 A. I did not. Though I do not think</p> <p>24 anything you read is inconsistent with my</p>

<p style="text-align: right;">Page 250</p> <p>1 statement in paragraph 17 regarding limitations                  2 and effectively regulated cosmetics.                  3 Q. And in the last line of that                  4 paragraph -- I'm sorry -- page 4 says that:                  5 "Ensuring the safety of cosmetics is                  6 a high priority for us."                  7 You didn't include that statement,                  8 did you?                  9 A. I did not.                  10 Q. FDA has never identified any health                  11 -- any public health risks with talcum powder                  12 products. True?                  13 DR. THOMPSON: Objection to                  14 form.                  15 THE WITNESS: Again, if we go                  16 to that internal guidance document, there                  17 is concerning language there. And if we                  18 go to the 2014 Citizen's Petition                  19 response that we discussed earlier today,                  20 there's concerning language there.                  21 So indeed FDA has expressed                  22 its -- its doubts regarding safety.                  23 BY MR. HEGARTY:                  24 Q. Well, FDA says in this document that</p>	<p style="text-align: right;">Page 252</p> <p>1 THE WITNESS: Yes. Yes, its                  2 2019 recall of talcum powder -- talcum                  3 powder products containing asbestos.                  4 BY MR. HEGARTY:                  5 Q. Besides that 2019 statement?                  6 A. Direct -- directly consumer -- to                  7 consumers, not to my knowledge.                  8 Q. So you in your previous answer                  9 indicated that there's somehow -- that this                  10 statement should somehow be taken with a grain of                  11 salt because she's a political appointee.                  12 Is that what you're saying?                  13 DR. THOMPSON: Object to form.                  14 THE WITNESS: No, I'm sorry.                  15 I was thinking out loud.                  16 I concluded -- again, this is                  17 verifiable. I know that Susan Mayne                  18 retains the director -- directorship of                  19 the Center at present. I said I do not                  20 know whether she's a political appointee                  21 or a career official. Could be either.                  22 No, that does not matter to my                  23 answer.                  24 BY MR. HEGARTY:</p>
<p style="text-align: right;">Page 251</p> <p>1 I just read that it will "act swiftly to inform                  2 and advise consumers of any identified public                  3 health risk," right?                  4 And it has not done so with regard                  5 to talcum powder products. True?                  6 A. With respect, this is a speech that                  7 a senior -- I'm not sure -- I would imagine -- I                  8 don't know if she's a career political appointee.                  9 I would imagine she's career, but a senior                  10 official director of -- of an FDA Center is making                  11 in Congressional testimony. This statement is                  12 crafted to serve that role very effectively.                  13 I have no basis in giving my expert                  14 opinions on Johnson &amp; Johnson's lack of compliance                  15 with the its regulatory and self-regulatory                  16 obligations regarding why particular lines are in                  17 this statement. It strikes me as eminently                  18 suitable and professional and appropriate for its                  19 moment.                  20 Q. Well, has FDA done anything to                  21 inform and advise consumers of any public health                  22 risks with talcum powder products?                  23 DR. THOMPSON: Objection.                  24 Form.</p>	<p style="text-align: right;">Page 253</p> <p>1 Q. You just admitted that and FDA found                  2 a public health risk through the finding -- its                  3 finding of asbestos -- in what it believes was                  4 finding of asbestos in a talcum powder bottle, it                  5 took action, correct?                  6 DR. THOMPSON: Object to form.                  7 THE WITNESS: I think -- I                  8 think we're -- we're diving down into the                  9 weeds when the essence of the opinions I                  10 offer, you know, really -- really have to                  11 do with -- with the big picture.                  12 Everything that I have seen                  13 and read from a number of sources,                  14 including sources from industry over a                  15 large number of years, identifies                  16 cosmetics regulation as having very                  17 limited statute -- statutory authority,                  18 having very few directly self-executing                  19 regulations, having very little FDA                  20 supervisory oversight, and placing the                  21 vast majority of the burden, really the                  22 exclusive burden, on manufacturers and                  23 sellers.                  24 Such that I reject your</p>

<p style="text-align: right;">Page 254</p> <p>1 suggestions that FDA taking occasional                  2 action shows that they will take all                  3 necessary action or that them refraining                  4 from action means that there are no                  5 problems.                  6 That said, I am happy to                  7 support the notion that most consumer                  8 products that are sold in America are                  9 sold by reputable companies trying to do                  10 the best they can and turn out to be                  11 safe. I certainly hope and expect that                  12 to be the case.                  13 BY MR. HEGARTY:                  14 Q. Let me go back to sort of where we                  15 started.                  16 You purported to say that you cited                  17 relevant excerpts of the testimony of Susan Mayne                  18 as it relates to any limitations on FDA's ability                  19 to regulate the industry, but you didn't cite the                  20 portion of the statement that we just read that                  21 says, if FDA has safety concerns, it will act.                  22 Is it your testimony that that's not                  23 relevant to the points you were making in this                  24 part of your -- your report?</p>	<p style="text-align: right;">Page 256</p> <p>1 statements are not the relevant support                  2 for the statement in paragraph 17.                  3 BY MR. HEGARTY:                  4 Q. Let's look paragraph 19.                  5 What is your reliance materials for                  6 the statements that you make in that paragraph?                  7 A. Most of the reliance materials come                  8 from the collection of important, well-edited,                  9 well-selected historical materials on cosmetics                  10 regulation that are in the Hutt, Merrill, and                  11 Grossman legal casebook, which is the leading                  12 casebook, you know. And I did some, you know,                  13 subsequent, as we've discussed, you know,                  14 exploration of some of the things that are cited.                  15 Some of the controversies that are described.                  16 Others come from statements that                  17 have been made in the Congressional hearings that                  18 are also cited more recently, but that postdate                  19 the last edition of that casebook.                  20 And it's been -- as a -- as an                  21 expert in regulatory design and the regulatory                  22 process, I can say that the forces that have                  23 induced the cosmetics industry at different times                  24 to take different positions on the extent of</p>
<p style="text-align: right;">Page 255</p> <p>1 DR. THOMPSON: Objection.                  2 Form.                  3 THE WITNESS: I will defend                  4 not only the contents, but the structure                  5 of what I wrote here. I have a paragraph                  6 that says the "FDA recognizes its                  7 limitations" and then I have quotes that                  8 support the recognition of the                  9 limitations.                  10 There might be another section                  11 of this or another report that talked                  12 about the things that FDA does well or                  13 right, but this is exactly what I think                  14 it should be to support the statements I                  15 made.                  16 BY MR. HEGARTY:                  17 Q. You read the statements and I read                  18 to you, and you intentionally chose to leave them                  19 out of your report, correct?                  20 MS. PARFITT: Objection.                  21 Form.                  22 DR. THOMPSON: Objection.                  23 Form.                  24 THE WITNESS: Those</p>	<p style="text-align: right;">Page 257</p> <p>1 federal government oversight are familiar and                  2 predictable, and I would be happy to enumerate                  3 them for you.                  4 Q. You in your report, as it relates to                  5 this paragraph, cite from no one at Johnson &amp;                  6 Johnson commenting on federal safety regulations,                  7 correct?                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: I cannot                  10 recall. Though I did observe when I                  11 looked at the companies that are                  12 supportive of the current                  13 Feinstein-Collins legislation that                  14 Johnson &amp; Johnson is supportive of that                  15 legislation.                  16 BY MR. HEGARTY:                  17 Q. In looking at paragraph number 20,                  18 you cite the statements by the PCPC president.                  19 Do you know that he's not authorized                  20 to speak for Johnson &amp; Johnson, correct?                  21 A. Well, he's --                  22 DR. THOMPSON: Object to form.                  23 THE WITNESS: I assume he's                  24 the former president because this is</p>

<p>Page 258</p> <p>1 historical material. If he's the current                  2 president, I was not aware of that.                  3 Again, sort of following the                  4 way that I construct -- constructed this                  5 report, 19 is a general statement that is                  6 then documented in 20 and 21 and 22,                  7 showing changes of position.                  8 But, yes, I would assume that                  9 the president of the industry trade                  10 association has never been authorized to                  11 speak for Johnson &amp; Johnson.                  12 BY MR. HEGARTY:                  13 Q. And he talks about and makes                  14 reference to "no unnecessary or burdensome                  15 regulation." That's what you cite in your -- in                  16 your paragraph.                  17 Are you advocating in your report                  18 that there should be unnecessary or burdensome                  19 regulation on the cosmetic industry?                  20 DR. THOMPSON: Objection.                  21 Form.                  22 THE WITNESS: No. (Laugh).                  23 BY MR. HEGARTY:                  24 Q. Okay. So is it your testimony that</p>	<p>Page 260</p> <p>1 What is the current number of FDA                  2 personnel working in the Office of Cosmetics and                  3 Colors?                  4 A. I do not know.                  5 Q. What was -- what were the numbers of                  6 personnel working there between 2015 and 2020?                  7 A. I do not know. It is still a small                  8 office.                  9 Q. What is the current budget for this                  10 office for 2021?                  11 A. I have seen that number in passing.                  12 But if we go -- go back to paragraph 18, the                  13 direct quote from Susan Mayne, "our program for                  14 cosmetics is approximately \$10 million," which is                  15 about 3 percent of just that one Center's annual                  16 budget of \$327 million. And, undoubtedly, if we                  17 were going to compare this to the drug or device                  18 oversight budget, it would be a pittance.                  19 I would also note in that connection                  20 if we want to talk about budgets, which I'm more                  21 than happy to do, that a major aspect of the                  22 current Senate proposal is to institute user fees                  23 on cosmetics companies, which is one way of                  24 addressing the -- the budgetary challenges, very</p>
<p>Page 259</p> <p>1 it is wrong to not want unnecessary or burdensome                  2 regulation?                  3 DR. THOMPSON: Objection.                  4 Form.                  5 THE WITNESS: I am citing his                  6 position expressed in 1995, which differs                  7 from the industry's position in 1998                  8 described in paragraph 21, which differs                  9 from the 2012 position described in                  10 paragraph 22, and which almost certainly                  11 would differ from the position today as                  12 representing the industry's equivocations                  13 regarding a more aggressive federal                  14 regulatory role.                  15 I would also note that the                  16 1975 position regarding self-regulation                  17 is that we will do this or perhaps give                  18 the appearance of doing this in order to                  19 forestall regulations, which in 1995                  20 Mr. Kavanaugh, on behalf of the industry,                  21 you know, in general opposed.                  22 BY MR. HEGARTY:                  23 Q. In paragraph 21, you make reference                  24 to statements made as it relates to 1998.</p>	<p>Page 261</p> <p>1 similar to what happened in the prescription drug                  2 domain in the early 2000s.                  3 Q. In this part of your report, is it                  4 your contention that FDA has not brought                  5 regulatory action regarding talcum powder products                  6 because its resources are limited?                  7 A. Would you ask that again, please?                  8 Q. Sure.                  9 Is it your contention as part of                  10 this part of your report that FDA has not brought                  11 regulatory action regarding talcum powder products                  12 because its resources are limited?                  13 DR. THOMPSON: Objection.                  14 Form.                  15 THE WITNESS: My contention                  16 in this part of the report is to                  17 emphasize the twin responsibilities of                  18 information disclosure and manufacturer                  19 self-governance, substantiation of safety                  20 for products and for cosmetic products                  21 and ingredients.                  22 In this particular part of                  23 this report, I'm not using this language                  24 to make a specific suggestion about</p>



<p style="text-align: right;">Page 262</p> <p>1 action or inaction regarding talc, but</p> <p>2 indeed budgetary shortfalls causes</p> <p>3 relatively little action in any cosmetic</p> <p>4 domain.</p> <p>5 MR. HEGARTY: Do you mind if</p> <p>6 we take a quick break?</p> <p>7 DR. THOMPSON: Sure.</p> <p>8 (Recess: 1:42 p.m. -</p> <p>9 1:51 p.m.)</p> <p>10 MR. HEGARTY: Okay. Let's go</p> <p>11 back on the record.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Okay. We are back on the record,</p> <p>14 Doctor, and next paragraph I want to look at is</p> <p>15 paragraph 26 of your report.</p> <p>16 A. Certainly.</p> <p>17 Q. Actually, it's paragraph 27.</p> <p>18 A. Okay.</p> <p>19 Q. You make the statement at the end</p> <p>20 that Johnson's Baby Powder -- "Johnson &amp; Johnson's</p> <p>21 talcum powder products include other potentially</p> <p>22 hazardous substances in varying amounts."</p> <p>23 What was your methodology for --</p> <p>24 well, first of all, before I ask that.</p>	<p style="text-align: right;">Page 264</p> <p>1 on Johnson's Baby Powder and Shower to Shower that</p> <p>2 Johnson &amp; Johnson has produced in this litigation,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. We've also established that you're</p> <p>6 not an expert on the testing procedures for talc,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. In particular, there's a test that</p> <p>10 is conducted on talc called XRD.</p> <p>11 Do you know what XRD is? X-ray</p> <p>12 diffraction?</p> <p>13 A. If you take it away from the</p> <p>14 acronym, I understand what x-ray diffraction is.</p> <p>15 Q. You're not an expert in x-ray</p> <p>16 diffraction, correct?</p> <p>17 A. No.</p> <p>18 Q. You're not an expert in transmission</p> <p>19 electron microscopy, correct?</p> <p>20 A. Again, I know the difference between</p> <p>21 transmission and scanning electron microscopy;</p> <p>22 but, no, I'm not a transmission microscopist.</p> <p>23 Q. You're not an expert in polarized</p> <p>24 light microscopy, correct?</p>
<p style="text-align: right;">Page 263</p> <p>1 What potentially hazardous</p> <p>2 substances are you referring to in that paragraph?</p> <p>3 A. Again, just forgive me because I</p> <p>4 guess this should -- this should be evident, but,</p> <p>5 again, to go to the structure of the report,</p> <p>6 there's a bolded statement about paragraph 27.</p> <p>7 Paragraph 27 basically introduces a series of</p> <p>8 paragraphs that provide the detail on paragraph</p> <p>9 27.</p> <p>10 So those were the categories of</p> <p>11 additional or incompletely specified or</p> <p>12 potentially hazardous or hazardous substances that</p> <p>13 either are or may be contained in talcum powder</p> <p>14 products.</p> <p>15 Q. And your methodology for making that</p> <p>16 conclusion was the review of the documents that we</p> <p>17 talked about earlier in the deposition?</p> <p>18 A. Exactly.</p> <p>19 DR. THOMPSON: A late object</p> <p>20 to form.</p> <p>21 MR. HEGARTY: That's okay.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. And we've already established that</p> <p>24 you have not analyzed all of the testing documents</p>	<p style="text-align: right;">Page 265</p> <p>1 A. Correct.</p> <p>2 Q. You're not an expert in scanning</p> <p>3 electron microscopy?</p> <p>4 A. As I just said, no.</p> <p>5 Q. And before being contacted by</p> <p>6 counsel for plaintiffs in this case, you had never</p> <p>7 considered any of those testing procedures that we</p> <p>8 just talked about, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I had never</p> <p>11 considered any of those testing</p> <p>12 procedures for talc. I have seen those</p> <p>13 testing procedures in use or read about</p> <p>14 them in use in various contexts over the</p> <p>15 decades.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. If we look at -- well, let me back</p> <p>18 up.</p> <p>19 You had never prior to being</p> <p>20 contacted by plaintiffs' counsel commented in any</p> <p>21 publication of yours or in any lecture or in any</p> <p>22 class of yours on XRD, TEM, PLM, or SEM, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. If we look at the next paragraph 28,</p>

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1 in that paragraph you refer to something called  
 2 "platy talc" (indicates).  
 3 Do you know where that phrase is  
 4 ever cited -- can you cite to me where that phrase  
 5 is cited in any publication?  
 6 DR. THOMPSON: Object to form.  
 7 THE WITNESS: I can't -- I  
 8 can't right now. I have seen  
 9 descriptions of it in various of the  
 10 documents that I have reviewed.  
 11 The attempt here was not to be  
 12 exhaustive regarding terminology, but  
 13 where there were a couple of phrases that  
 14 seemed to be in common use for the same  
 15 substance, to put them in the same  
 16 paragraph.  
 17 BY MR. HEGARTY:  
 18 Q. Do you consider yourself an expert  
 19 in IARC's processes and procedures for its review  
 20 of substances?  
 21 A. No.  
 22 Q. You've never been involved in an  
 23 IARC proceeding, correct?  
 24 A. Correct.

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1 Q. You've never before this report  
 2 cited to an IARC Monograph in any document you  
 3 prepared, correct?  
 4 DR. THOMPSON: Object to form.  
 5 THE WITNESS: Not that I  
 6 recall.  
 7 BY MR. HEGARTY:  
 8 Q. You had not read the IARC monographs  
 9 for talc not containing asbestiform fibers and  
 10 asbestos prior to being contacted by counsel for  
 11 plaintiffs, correct?  
 12 A. That is correct.  
 13 Q. Next paragraph 29 begins by  
 14 referring to something called "fibrous  
 15 (asbestiform) talc."  
 16 What is your definition of "fibrous  
 17 (asbestiform) talc"?  
 18 A. So my understanding is that talc  
 19 that doesn't have the flat morphology that makes  
 20 it hydrophobic and generally, you know, useful in  
 21 something like baby powder can exist in various  
 22 fiber forms. And my review of the documents we  
 23 described refers to that as often "fibrous" or  
 24 "asbestiform talc" distinct from what we would

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1 consider asbestos, but geologically related in  
 2 terms of often being in the same deposits and at  
 3 least based on the IARC conclusions having similar  
 4 health hazards to asbestos.  
 5 Q. You did not do a comprehensive  
 6 analysis of the literature on talc fibers and  
 7 ovarian cancer risk, correct?  
 8 DR. THOMPSON: Object to form.  
 9 THE WITNESS: I don't know  
 10 that anybody has done a lot of that  
 11 research because I think it's very hard  
 12 to do given that talc has not been  
 13 systematically assayed for fibrous  
 14 content.  
 15 But I think my -- my belief  
 16 would be -- I guess my opinion would be  
 17 that to the extent that fibers are an  
 18 inevitable component of a talc deposit,  
 19 that there can be some very significant  
 20 associations between talc fibers and  
 21 ovarian cancer.  
 22 BY MR. HEGARTY:  
 23 Q. You said that talc fibers are an  
 24 inevitable component of talc. I think that's what

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1 you said.  
 2 A. That's my --  
 3 Q. What's your source -- what's your  
 4 source for that statement?  
 5 A. That's my understanding based on the  
 6 documents. I, you know, can't say, you know, the  
 7 prevalence fiber count, the assays for talc  
 8 fibers. In fact, the assays for asbestos seem to  
 9 be contested and in flux, and there seems to be a  
 10 consensus, at least within the FDA, that there  
 11 needs to be some improvement to those standards.  
 12 Q. You cite in this paragraph, that is  
 13 paragraph 29, to IARC's 2012 monograph.  
 14 That 2012 monograph nowhere uses the  
 15 phrase "fibrous talc," does it?  
 16 DR. THOMPSON: Object to form.  
 17 THE WITNESS: I would -- I  
 18 would have to review it. The -- the  
 19 monograph on talc not containing  
 20 asbestiform fibers -- hold on, figure out  
 21 where we are -- is an evaluation of the  
 22 platy talc.  
 23 I reviewed all of this to see  
 24 how they were cabining the questions they

<p style="text-align: right;">Page 270</p> <p>1 were asked, and I made sort of note of                  2 all of that for purposes of the report.                  3 I am not giving either geology                  4 opinions or opinions on causation, but I                  5 noted the conclusions in the later IARC                  6 regarding asbestos that -- that its                  7 conclusions regarding asbestos would                  8 equally apply to -- to what we'll call                  9 "fibrous talc" but to non-asbestos fibers                  10 occurring in otherwise platy talc.                  11 BY MR. HEGARTY:                  12 Q. You say in this paragraph 29 that:                  13 "Asbestiform talc is classified                  14 alongside asbestos in a 2012 IARC Monograph as                  15 carcinogenic to humans (Group 1) and causing                  16 ovarian cancer."                  17 MR. HEGARTY: I marked as                  18 Exhibit No. 14 a copy of that 2012                  19 monograph. I didn't bring an extra                  20 copy --                  21 DR. THOMPSON: That's all                  22 right.                  23 MR. HEGARTY: -- because I                  24 couldn't carry it.</p>	<p style="text-align: right;">Page 272</p> <p>1 asbestiform fibers?                  2 A. It's the asbestiform fibers in talc                  3 containing asbestiform fibers, to be precise.                  4 Q. So you're defining for purposes of                  5 this paragraph talc containing asbestiform fibers                  6 or -- I'm sorry.                  7 You're defining in this paragraph                  8 asbestiform talc as talc containing asbestiform                  9 fibers, correct?                  10 A. Those fibers in talc, yes. Again,                  11 for my expert report, which we'll -- which draws                  12 regulatory obligation and self-regulatory conduct                  13 conclusions from the presence in talcum powder                  14 products of asbestos and asbestiform fibers, I am                  15 using the terms "asbestiform fibers," "talc                  16 containing asbestiform fibers," and "fibrous talc"                  17 to mean essentially the same thing.                  18 If that is incorrect, I apologize,                  19 but it's also something that's much more relevant                  20 to, you know, a different expert's report than to                  21 mine.                  22 Q. For purposes of this part of your                  23 report, you made reference to the expert report of                  24 Longo and Rigler that we mentioned earlier.</p>
<p style="text-align: right;">Page 271</p> <p>1 THE WITNESS: That was mine                  2 (indicates).                  3 (Document marked for                  4 identification as Sage Exhibit 14.)                  5 BY MR. HEGARTY:                  6 Q. If you look over at page 219 of that                  7 monograph?                  8 A. Uh-huh.                  9 Q. It says in the first paragraph                  10 towards the bottom:                  11 "The conclusions reached in this                  12 Monograph about asbestos and its carcinogenic                  13 risks apply to these six types of fibres wherever                  14 they are found, and that includes talc containing                  15 asbestiform fibres."                  16 Do you see that?                  17 A. Yes.                  18 Q. Are you equating or are you saying                  19 that what you're saying referring to in this                  20 paragraph is talc containing asbestiform fibers?                  21 DR. THOMPSON: Object to form.                  22 BY MR. HEGARTY:                  23 Q. In other words, are what you're                  24 calling asbestiform talc, talc containing</p>	<p style="text-align: right;">Page 273</p> <p>1 Do you see that in paragraph -- in                  2 footnote 7?                  3 A. Yes.                  4 Q. Are you aware that they are paid                  5 plaintiffs' experts?                  6 MS. PARFITT: Objection.                  7 Form.                  8 DR. THOMPSON: Objection.                  9 Form.                  10 THE WITNESS: Yes, I am.                  11 BY MR. HEGARTY:                  12 Q. Are you aware that they've been paid                  13 millions of dollars by the plaintiffs' lawyers in                  14 the talc litigation?                  15 DR. THOMPSON: Objection.                  16 Form.                  17 THE WITNESS: I do not know                  18 their compensation.                  19 BY MR. HEGARTY:                  20 Q. Are you aware that they have not                  21 published their findings in any peer-reviewed                  22 journal?                  23 DR. THOMPSON: Objection.                  24 Form.</p>

<p style="text-align: right;">Page 274</p> <p>1 THE WITNESS: I was not aware                  2 of that.                  3 BY MR. HEGARTY:                  4 Q. What did you do, if anything, to                  5 assess the validity of the findings of Drs. Longo                  6 and Rigler?                  7 DR. THOMPSON: Objection.                  8 Form.                  9 THE WITNESS: With reference                  10 to asbestiform fibers in talc, the -- the                  11 way I approached a lot of the medical and                  12 scientific evidence in formulating my                  13 opinions involve looking for multiple                  14 consistent sources of the same                  15 information.                  16 And certainly with respect to                  17 the presence of asbestos in talc, I saw                  18 multiple consistent sources, of which the                  19 Longo reports were only one.                  20 BY MR. HEGARTY:                  21 Q. Do you have the expertise to                  22 evaluate the testing that they did for its                  23 reliability?                  24 DR. THOMPSON: Objection.</p>	<p style="text-align: right;">Page 276</p> <p>1 report?                  2 A. I don't recall, honestly.                  3 Q. Would you like to have seen such                  4 expert reports if they exist?                  5 A. I would be happy to consider them.                  6 Q. Did you ask for any defense expert                  7 reports commenting on the processes and procedures                  8 and reliability of the findings of Drs. Longo and                  9 Rigler in their report?                  10 A. On those, I don't believe I saw the                  11 defense perspective. Though it may have been                  12 covered in the Health Canada submission from                  13 Johnson &amp; Johnson or in similar documentation.                  14 Obviously, there was a lot of back and forth about                  15 testing standards and the reliability of results,                  16 and to the extent I needed to consider those to                  17 formulate my own regulatory opinions, I considered                  18 them.                  19 Q. In paragraph 30, you refer to a                  20 document you call "Hopkins 28."                  21 Do you see that?                  22 A. Yes.                  23 MR. HEGARTY: I'm going to                  24 mark as Exhibit No. 15 the Hopkins 28</p>
<p style="text-align: right;">Page 275</p> <p>1 Form.                  2 THE WITNESS: I have the                  3 expertise to read descriptions of testing                  4 approaches, and insofar as there's                  5 information presented about the                  6 advantages or disadvantages compared to                  7 other testing approaches, I can reach a                  8 general conclusion that would be at a                  9 higher level than a layperson.                  10 BY MR. HEGARTY:                  11 Q. Did you do anything independently to                  12 assess the reliability of the findings reported in                  13 the report by Drs. Longo and Rigler you cite here?                  14 A. Independently, no.                  15 DR. THOMPSON: Objection.                  16 Form.                  17 THE WITNESS: But they were                  18 consistent with -- at least specifically                  19 with respect to asbestos content, they                  20 were consistent with other sources.                  21 BY MR. HEGARTY:                  22 Q. Were you provided with any expert                  23 reports by Johnson &amp; Johnson's experts as it                  24 relates to commentary on Drs. Rigler and Longo's</p>	<p style="text-align: right;">Page 277</p> <p>1 document.                  2 (Document marked for                  3 identification as Sage Exhibit 15.)                  4 BY MR. HEGARTY:                  5 Q. Does that look familiar to you?                  6 A. Yes, it does.                  7 Q. Do you know who created this                  8 document?                  9 A. I believe I was told, but I can't                  10 recall right now.                  11 Q. Do you know that this document was                  12 created by plaintiffs' counsel in this case?                  13 DR. THOMPSON: Objection.                  14 Form. Misstates.                  15 THE WITNESS: I don't know                  16 this. I mean, it's a -- it's a synthesis                  17 and it is an exhibit. It doesn't have                  18 any other markings on it that would tell                  19 me where it comes from.                  20 BY MR. HEGARTY:                  21 Q. Who is Hopkins?                  22 A. I was told that, and right now at                  23 this point in this deposition I'm afraid I can't                  24 -- I can't remember.</p>

<p style="text-align: right;">Page 278</p> <p>1 What I -- what I do remember about                  2 this is that this was one of the confirmatory                  3 sources of information about asbestos risk in --                  4 in baby powder products, and there was a                  5 back-and-forth between, I guess, Mr. Hopkins and                  6 defense experts as to whether these internal                  7 Johnson &amp; Johnson reports were actually asbestos                  8 or were not asbestos, using the standards that                  9 Johnson &amp; Johnson applied.                  10 And I was also shown a subsequent                  11 document where I imagine it was Mr. Hopkins who                  12 went back and responded to the defense's                  13 objections to certain characterizations, and I'm                  14 afraid that's the best I can do today in                  15 remembering this particular document.                  16 Q. Did you cite that other document                  17 that you called a responsive document in your                  18 report?                  19 A. No. I believe I was shown that                  20 responsive document subsequently to final --                  21 Q. Shown by -- I'm sorry.                  22 A. -- to finalizing the report.                  23 Q. Shown by whom?                  24 A. Shown -- shown my plaintiffs'</p>	<p style="text-align: right;">Page 280</p> <p>1 independently confirm. This compilation                  2 was something that I looked at and                  3 thought about and discussed and saw the                  4 defendants' position on.                  5 BY MR. HEGARTY:                  6 Q. You took this document at face                  7 value, correct?                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: I took this                  10 document as being an accurate list of                  11 dates and internal testing and results.                  12 BY MR. HEGARTY:                  13 Q. If this document is inaccurate, you                  14 agree that that can affect your opinions in this                  15 case, correct?                  16 DR. THOMPSON: Objection.                  17 THE WITNESS: No, I don't                  18 think my -- my opinions, again,                  19 considering the totality of the opinions                  20 and the other sources of evidence of                  21 asbestos adulteration in baby powder                  22 products, I don't think my opinions stand                  23 on or fall on this or any other single                  24 document.</p>
<p style="text-align: right;">Page 279</p> <p>1 counsel in a discussion about asbestos content.                  2 Q. This document makes reference to                  3 other exhibits.                  4 Did you review the documents that                  5 this exhibit references, the actual documents                  6 themselves?                  7 A. No.                  8 It was evident that such documents                  9 would exist because this was a compilation of                  10 documents.                  11 Q. Do you see on the very first line of                  12 Exhibit or -- I'm sorry -- the line in Exhibit                  13 No. 28 that's dated a 5/9/1958?                  14 Do you see that line?                  15 A. (Laugh). Unless we want to declare                  16 a brief recess for me to get a magnifying glass                  17 from my briefcase, I'm having trouble reading this                  18 particular document.                  19 Q. Needless to say, though, you did not                  20 independently confirm whether any of the documents                  21 that are referenced here actually show asbestos in                  22 Johnson's Baby Powder, correct?                  23 DR. THOMPSON: Object to form.                  24 THE WITNESS: I did not</p>	<p style="text-align: right;">Page 281</p> <p>1 BY MR. HEGARTY:                  2 Q. Again, you make reference in this                  3 paragraph to what we talked about earlier, the                  4 report of Drs. Longo and Rigler.                  5 Did you do any analysis yourself as                  6 far as where they obtained the product that they                  7 tested and whose results they reported in this --                  8 in this report?                  9 A. No.                  10 Q. You also make reference in this                  11 paragraph, as you mentioned earlier, to FDA's 2019                  12 testing.                  13 Do you see that?                  14 A. I'm sorry. I was taking a drink of                  15 water. Hold on.                  16 Q. That's all right.                  17 A. Yes, of course.                  18 Q. And did you actually review the                  19 testing document from the lab that FDA relied upon                  20 to report that finding?                  21 A. I believe that document was                  22 available. I most remember reviewing FDA's press                  23 releases and other public statements at the time                  24 of their testing and -- and their findings and</p>



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1 what became, thankfully, voluntary recalls of the  
 2 products involved.  
 3 Q. Do you recall what type of asbestos  
 4 FDA claimed to have found pursuant to its testing  
 5 results --  
 6 A. No.  
 7 Q. -- testing procedures?  
 8 A. No, I don't at the moment.  
 9 MR. HEGARTY: I'm going to  
 10 mark as Exhibit No. 16 a statement by  
 11 Johnson & Johnson of December 3, 2019.  
 12 (Document marked for  
 13 identification as Sage Exhibit 16.)  
 14 BY MR. HEGARTY:  
 15 Q. Is this the first time you've ever  
 16 seen this?  
 17 A. I was aware that Johnson & Johnson  
 18 had done its own testing of a number of samples  
 19 and had found no asbestos using its standards. I  
 20 do think this is the first time I've seen this  
 21 press release.  
 22 Q. Do you see in this document  
 23 number -- Exhibit No. 16 the third paragraph says  
 24 that:

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1 "The Company's investigation  
 2 included that the most probable root causes for  
 3 the FDA's reported results were either test sample  
 4 contamination and/or analyst error at the AMA  
 5 lab."  
 6 Do you see where I'm reading from?  
 7 A. I just -- just one moment. I'm  
 8 seeing -- I'm seeing a similar statement in the  
 9 "Over the course of the investigation" paragraph.  
 10 Is that where you're reading from?  
 11 Q. I was reading from the third  
 12 paragraph.  
 13 A. Oh.  
 14 Q. The first page.  
 15 A. Oh, I'm sorry, yes. Yes.  
 16 Q. Okay. And then do you see a couple  
 17 paragraphs down where the statement notes that 155  
 18 tests conducted by two different third-party labs  
 19 confirmed that there is no asbestos in that  
 20 product?  
 21 Do you see that?  
 22 A. I see that assertion.  
 23 Q. And you said prior to seeing this  
 24 statement that you were aware at least of some of

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1 this being reported, correct?  
 2 A. I am aware of -- of some of this  
 3 being reported, yes.  
 4 Q. Do you agree that the testing that  
 5 was done calls -- by Johnson & Johnson calls into  
 6 question the accuracy of the FDA testing results?  
 7 DR. THOMPSON: Objection.  
 8 Form.  
 9 THE WITNESS: I don't have a  
 10 basis to agree with that.  
 11 If the FDA had retracted its  
 12 findings, then I would have a basis; but,  
 13 again, the core of my analysis is a  
 14 regulatory analysis, and I'm not offering  
 15 an expert opinion as to causation or as  
 16 to any particular set of -- of product  
 17 tests.  
 18 BY MR. HEGARTY:  
 19 Q. You did not make any reference to  
 20 any follow-up testing done by Johnson & Johnson in  
 21 your report, correct?  
 22 A. I don't believe so.  
 23 Q. You also did not make reference to  
 24 testing done by FDA in 2009 and 2010 of Johnson's

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1 Baby Powder finding no asbestos, did you?  
 2 DR. THOMPSON: Object to form.  
 3 THE WITNESS: My recollection  
 4 of that -- and, you know, bear with me  
 5 complicated topic -- is that those were  
 6 tests of a rather small number of  
 7 samples; and, no, I did not make  
 8 reference to those.  
 9 BY MR. HEGARTY:  
 10 Q. Well, you made reference to the 2019  
 11 testing by FDA.  
 12 Why did you not make reference to  
 13 the 2009 testing by FDA?  
 14 DR. THOMPSON: Object to form.  
 15 THE WITNESS: Because the  
 16 2019 testing resulted in regulatory  
 17 action and rose to the level that was  
 18 something widely reported and in my  
 19 opinion reliable.  
 20 BY MR. HEGARTY:  
 21 Q. Well, you mentioned a moment ago  
 22 that you recall that the 2009 test results were of  
 23 a small number of samples.  
 24 Do you understand that the 2019 test

<p style="text-align: right;">Page 286</p> <p>1 result was from a single bottle of Johnson's Baby                  2 Powder?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I understand                  5 that the positive result was a single                  6 bottle, but recall that if you're trying                  7 to prove a negative and you test -- I'm                  8 making up a number -- five bottles of                  9 baby powder and don't find asbestos,                  10 that's not going to be evidence that no                  11 bottle has asbestos.</p> <p>12 I suspect with regard to the                  13 2019 testing that if we multiplied one                  14 asbestos-laden bottle out to the full                  15 number of bottles of baby powder that                  16 Johnson &amp; Johnson sold that year, I doubt                  17 that your client would -- would decide                  18 that, you know, we'd have to see how many                  19 bottles -- was it 50 some that Johnson &amp;                  20 Johnson -- that FDA tested?</p> <p>21 But, I mean, if we -- if we                  22 divide your total production by 50 and                  23 multiply that number by 1 and said                  24 that's -- that's how many asbestos-laden</p>	<p style="text-align: right;">Page 288</p> <p>1 I'm not expressing an expert opinion                  2 as -- as to who wins that particular argument; but                  3 if there is asbestos in baby powder in one bottle,                  4 it is unlikely that there is no asbestos in any                  5 other bottle in an entire global production.</p> <p>6 Q. That's not my question.                  7 My question is: If -- under your                  8 standard if every test that has been done on                  9 Johnson's Baby Powder showed no asbestos, you                  10 would still not believe that that was sufficient                  11 to prove that Johnson's Baby Powder doesn't have                  12 asbestos in it, correct?</p> <p>13 MS. PARFITT: Objection.</p> <p>14 DR. THOMPSON: Object to form.</p> <p>15 THE WITNESS: My belief in                  16 some sense is irrelevant here.</p> <p>17 I have documentary evidence of                  18 asbestos in baby powder and that is                  19 highly relevant to my regulatory                  20 conclusions.</p> <p>21 I have seen many documents                  22 that cast doubt on the sufficiency of a                  23 long-time testing standard for asbestos                  24 in terms of actually determining whether</p>
<p style="text-align: right;">Page 287</p> <p>1 bottles of baby powder in the market, I                  2 don't think your client would be                  3 comfortable with that. You know, this is                  4 not scientifically comparable, a negative                  5 finding in three bottles.</p> <p>6 If we want to do positive                  7 predictive value and negative predictive                  8 value calculations, these two are not                  9 comparable pieces of logic.</p> <p>10 BY MR. HEGARTY:                  11 Q. Well, according to your analysis, a                  12 negative finding in every bottle tested would                  13 still not be enough under your standard to prove                  14 that talcum powder products don't contain                  15 asbestos, correct?</p> <p>16 A. That --</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: That's                  19 incorrect.</p> <p>20 BY MR. HEGARTY:                  21 Q. How is that incorrect?                  22 A. The FDA used its laboratories and                  23 its laboratory standards. Johnson &amp; Johnson used                  24 others and disagreed with the FDA's finding.</p>	<p style="text-align: right;">Page 289</p> <p>1 there is asbestos or, for that matter,                  2 asbestiform fibers in baby powder                  3 products or has been over the years,                  4 which has understandably produced in me                  5 some skepticism around negative findings.</p> <p>6 May not be applicable to these                  7 particular assays because I can't weight                  8 the details on short notice, but I think                  9 I am no more demanding of Johnson &amp;                  10 Johnson than the law and the regulations                  11 expect me to be.</p> <p>12 BY MR. HEGARTY:                  13 Q. You do not have the expertise to                  14 comment on how much asbestos exposure can cause                  15 ovarian cancer, correct?</p> <p>16 DR. THOMPSON: Object.</p> <p>17 THE WITNESS: I do not, but                  18 there is a consensus among experts and                  19 regulatory authorities that the presence                  20 of asbestos in consumer products is an                  21 adulterant and is hazardous to health.</p> <p>22 BY MR. HEGARTY:                  23 Q. If you look at paragraph 31, you                  24 comment on fragrances.</p>

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1 And before being hired by  
 2 plaintiffs, have you ever commented on fragrances  
 3 in a consumer product?  
 4 A. I have never commented on  
 5 fragrances.  
 6 Q. Your entire -- your sole reference  
 7 in this paragraph is to an expert report of  
 8 Dr. Crowley.  
 9 Did you read that report in its  
 10 entirety?  
 11 A. In its entirety, no. I did look at  
 12 it, and the purpose of this is that consistent  
 13 with current FDA requirements, fragrance-related  
 14 disclosures for cosmetics are limited as a  
 15 fragrance being something that is often of great  
 16 proprietary value to the company making the  
 17 product.  
 18 I have -- I would have preference  
 19 for greater disclosure of fragrance-related  
 20 ingredients, but the purpose of including  
 21 paragraph 31 is that there are many ingredients in  
 22 talcum powder products beyond what's listed on the  
 23 label.  
 24 Q. You did not do your own independent

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1 assessment of any risk associated with any of the  
 2 fragrances in Johnson's Baby Powder, correct?  
 3 A. Correct.  
 4 Q. If you look over at paragraph 32 of  
 5 your report, you cite in that paragraph to a Pier  
 6 Exhibit 47.  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. Who is Pier?  
 10 A. I cannot recall.  
 11 Q. What's her name? Do you know what  
 12 her name is? First name?  
 13 A. No.  
 14 Q. Is she employed by Johnson &  
 15 Johnson?  
 16 A. I would have to go back and -- and  
 17 look at the exhibits.  
 18 Q. Did you read her deposition?  
 19 A. I can't recall.  
 20 MR. HEGARTY: I'm going to  
 21 mark as Exhibit 17 the Pier exhibit that  
 22 you cite in this paragraph.  
 23 (Document marked for  
 24 identification as Sage Exhibit 17.)

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1 BY MR. HEGARTY:  
 2 Q. Does that exhibit look familiar to  
 3 you?  
 4 A. In passing, yes. I don't think I  
 5 spent much time looking at this.  
 6 Q. Did you look at the individual  
 7 documents from which this document was prepared?  
 8 A. No. I just looked at the list of,  
 9 you know, as presented here in the substances that  
 10 were -- that were present in -- in these samples  
 11 as a confirmation that indeed there are materials  
 12 here that in some instances, in some doses, in  
 13 some exposures are known to have health hazards.  
 14 But I'm not making -- the same way  
 15 I'm not offering an opinion as a scientific  
 16 expert as to whether, you know, talcum powder  
 17 exposure causes ovarian cancer, I'm not offering a  
 18 scientific opinion on the causal connection  
 19 between any one of these particular ingredients  
 20 and any particular health injury.  
 21 Q. Do you know who prepared this  
 22 document?  
 23 A. I would assume this is also a --  
 24 well, actually, no, I don't know. I would

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1 assume -- I would assume this is also a  
 2 plaintiffs' exhibit or a plaintiffs' document, but  
 3 I don't know.  
 4 Q. And plaintiffs' lawyers provided you  
 5 with this Exhibit Pier 47 and Hopkins 28, correct?  
 6 A. Yes, and this was, you know, in  
 7 response to my request about having metal content  
 8 and other -- other potential contaminants or  
 9 adulterants of -- of baby powder products.  
 10 Q. Did you independently investigate  
 11 any or independently assess the literature as it  
 12 relates to heavy metals and the risk of ovarian  
 13 cancer?  
 14 A. I did not. I considered these risks  
 15 worth mentioning in light of the regulatory  
 16 obligations, but less certain in their hazardous  
 17 consequences than asbestos, which is why I would  
 18 sort of go back to the bold heading above all of  
 19 these paragraphs which says "Contain or may  
 20 contain ingredients that pose health hazards to  
 21 consumers."  
 22 Q. You did no independent assessment as  
 23 far as whether there are heavy metals in Johnson's  
 24 Baby Powder, correct?

<p style="text-align: right;">Page 294</p> <p>1 A. Correct.</p> <p>2 Q. You did no assessment, to the extent</p> <p>3 there are any such materials in Johnson's Baby</p> <p>4 Powder, as far as the extent of any such</p> <p>5 materials, correct?</p> <p>6 A. In terms of concentrations and</p> <p>7 overall prevalence and likelihood of exposure, no.</p> <p>8 Q. You did not read any medical</p> <p>9 literature as it relates to exposure to these</p> <p>10 heavy metals and cancer risk, correct?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I can't -- I</p> <p>13 can't recall. It wouldn't have been --</p> <p>14 it wasn't the focus of any of the</p> <p>15 scientific literature that I reviewed.</p> <p>16 It might well have been mentioned in</p> <p>17 passing.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You reference -- or strike that.</p> <p>20 There are monographs that refer to</p> <p>21 these heavy metals.</p> <p>22 Did you review the monographs for</p> <p>23 these heavy metals by IARC?</p> <p>24 A. Did I review an IARC heavy metal</p>	<p style="text-align: right;">Page 296</p> <p>1 Q. Does EPA allow levels of asbestos in</p> <p>2 drinking water?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: I do not know.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. If we look next at --</p> <p>7 A. I would say that, you know,</p> <p>8 ingestion of asbestos has never been a root of</p> <p>9 exposure that I have seen to be frequently</p> <p>10 associated with a health hazard. It doesn't mean</p> <p>11 it couldn't be. Very similar in some ways to</p> <p>12 radon exposure.</p> <p>13 Q. If you look next at paragraph 42.</p> <p>14 A. Yes.</p> <p>15 Q. What is your authority for the</p> <p>16 definition of risk that you have in that</p> <p>17 paragraph?</p> <p>18 A. This is -- this is from my</p> <p>19 longstanding expertise in risk regulation and risk</p> <p>20 assessment, and this -- this is a, I would say,</p> <p>21 majority view makes a distinction between risk and</p> <p>22 uncertainty. It is, again, a distinction that is</p> <p>23 made for purposes of analysis and purposes of</p> <p>24 regulatory action.</p>
<p style="text-align: right;">Page 295</p> <p>1 monograph? Not in any detail and perhaps not at</p> <p>2 all. I can't recall.</p> <p>3 Q. If you look over next at paragraph</p> <p>4 39, you say that:</p> <p>5 "Current literature suggests that</p> <p>6 there is no safe level of asbestos."</p> <p>7 Do you see where I'm reading?</p> <p>8 A. Yes.</p> <p>9 Q. Do you understand that there are</p> <p>10 background levels of asbestos in urban and other</p> <p>11 areas of the United States?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I did not know</p> <p>14 that. It would not surprise me.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. In your -- I'm sorry. Go ahead.</p> <p>17 A. I'm done.</p> <p>18 Q. In your opinion, do background</p> <p>19 levels of asbestos in the air cause ovarian</p> <p>20 cancer?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: I have no basis</p> <p>23 for giving an opinion on that.</p> <p>24 BY MR. HEGARTY:</p>	<p style="text-align: right;">Page 297</p> <p>1 It is -- it's not a matter of</p> <p>2 scientific fact. Most of this comes out of the</p> <p>3 economics literature. Some economists use the</p> <p>4 umbrella term "risk" to describe both known</p> <p>5 probabilities and unknown aspects of those</p> <p>6 probabilities.</p> <p>7 I would say more economists do what</p> <p>8 I have done here and make a distinction for</p> <p>9 discussion purposes between risk and uncertainty,</p> <p>10 and I think that that distinction is essential to</p> <p>11 these opinions because there's a specific</p> <p>12 regulatory requirement, as you know, that</p> <p>13 uncertainty be disclosed in connection with</p> <p>14 cosmetic safety.</p> <p>15 Q. If we look at paragraph 45, you say:</p> <p>16 "Both the risk and the uncertainty</p> <p>17 must be disclosed under law."</p> <p>18 First, to what law are you</p> <p>19 referring?</p> <p>20 A. So -- so with respect to cosmetics,</p> <p>21 you have these statutory pillars of adulteration</p> <p>22 and misbranding because you don't have that much</p> <p>23 more.</p> <p>24 And then in terms of FDA regulation</p>

<p style="text-align: right;">Page 298</p> <p>1 that's in the CFR, you have both 740.1 part A in                  2 terms of warning labels. "Labels shall bear a                  3 warning statement wherever necessary or                  4 appropriate to prevent the health hazard that may                  5 be associated with the product." You know, "may                  6 be associated" clearly encompasses risks.                  7 And then you have this really belt                  8 and suspenders and, I think, extremely important                  9 provision of 740.10(a), which -- which emphasizes                  10 the manufacturer's independent obligation to                  11 adequately substantiate safety of -- of cosmetic                  12 products and ingredients prior to marketing.                  13 And then says that anything that has                  14 not been adequately substantiated -- meaning we                  15 don't know what the -- the risks, or lack of                  16 risks, are or the warnings or instructions that                  17 might accompany them -- has to bear this                  18 additional specified statement that the safety of                  19 this product has not been determined.                  20 Q. Have you ever in any written                  21 document of yours prior to your expert report made                  22 the statement that with regard to the cosmetic                  23 statutes and regulations both the risk and                  24 uncertainty must be disclosed?</p>	<p style="text-align: right;">Page 300</p> <p>1 A. If you just give me a moment.                  2 Yes.                  3 Q. Can you cite for me any Johnson &amp;                  4 Johnson employee who has ever expressed the view                  5 that there is risk and uncertainty regarding talc                  6 and ovarian cancer?                  7 DR. THOMPSON: Object to form.                  8 THE WITNESS: I believe I                  9 have seen some documentation regarding to                  10 use a nonscientific term "queasiness" on                  11 the part of Johnson &amp; Johnson employees                  12 regarding the possibility that baby                  13 powder is not safe applied perineally in                  14 terms of ovarian cancer risk.                  15 Is that a description of risk                  16 and uncertainty? I think so, but you                  17 might not.                  18 BY MR. HEGARTY:                  19 Q. Do you cite that document in this                  20 report?                  21 A. No. In terms of corporate -- I make                  22 no claims about corporate motive. And when I use                  23 corporate knowledge, I'm really talking about                  24 notice, and there has been, you know, 50 years of</p>
<p style="text-align: right;">Page 299</p> <p>1 DR. THOMPSON: Object to form.                  2 THE WITNESS: No.                  3 BY MR. HEGARTY:                  4 Q. Can you cite for me a statement by                  5 anyone in any publication prior to you writing                  6 your expert report where they said that with                  7 regard to the cosmetic statutes and regulations                  8 both the risk and uncertainty must be disclosed?                  9 DR. THOMPSON: Object to form.                  10 THE WITNESS: Using those                  11 terms?                  12 BY MR. HEGARTY:                  13 Q. Correct.                  14 A. No, but those concepts, absolutely.                  15 The notion of a health hazard is a probabilistic                  16 determination and that is a risk, and the 740.10                  17 obligation, which has been referenced in many                  18 settings over the years since the 1970s when it                  19 was put into regulation, is uncertainty.                  20 Q. You make the statement over on page                  21 7 that "Johnson &amp; Johnson has known about risk and                  22 uncertainty regarding talc and ovarian cancer for                  23 decades."                  24 Do you see where I'm reading?</p>	<p style="text-align: right;">Page 301</p> <p>1 scientific literature raising concerns about                  2 various aspects of talc and its potential or                  3 actual adulterants and cancer risk.                  4 Q. You've never spoken to anyone at                  5 Johnson &amp; Johnson regarding talcum powder                  6 products, correct?                  7 A. Correct.                  8 Q. If we look over at paragraph 47, you                  9 state in the first line:                  10 "Johnson &amp; Johnson's resistance to                  11 the presence in talcum powder products of fibrous                  12 constituents that pose risk to human health is                  13 strikingly at odds with the factual history."                  14 You say "Johnson &amp; Johnson's                  15 resistance." To whom at Johnson &amp; Johnson are you                  16 referring to?                  17 A. I'm referring to the persistent                  18 unwillingness in the context that I have examined,                  19 including this litigation, of Johnson &amp; Johnson to                  20 make any concession whatsoever regarding the lack                  21 of evidence of safety for its legacy product.                  22 Q. Are you able to -- strike that.                  23 Are you commenting on any individual                  24 person's view or opinion at Johnson &amp; Johnson in</p>



<p style="text-align: right;">Page 302</p> <p>1 your report?</p> <p>2 A. If we were to look at Facts About</p> <p>3 Talc, either the depository of documents or the</p> <p>4 consumer-facing reassurances, it makes no</p> <p>5 concession even to uncertainty, which I actually</p> <p>6 find disappointing, frankly shocking, and directly</p> <p>7 at odds with its regulatory obligations.</p> <p>8 Q. That didn't answer my question.</p> <p>9 Do you rely on any individual</p> <p>10 person's statements at Johnson &amp; Johnson for any</p> <p>11 of the statements in your report?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I would -- do I</p> <p>14 -- again, I have considered statements of</p> <p>15 many employees. Do I cite any particular</p> <p>16 individual or today do I recall the</p> <p>17 individual as being particularly</p> <p>18 important to my conclusions? No.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. In paragraph 48, you state:</p> <p>21 "Johnson &amp; Johnson Laboratories</p> <p>22 recognized the inflammatory effects of talcum</p> <p>23 powder in the peritoneal cavity."</p> <p>24 And you cite as support an article</p>	<p style="text-align: right;">Page 304</p> <p>1 that might be resulting from powder on</p> <p>2 gloves. One could have granulomatosis</p> <p>3 and other types of inflammation.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. But you're also aware that the FDA</p> <p>6 action was not based on any concern about cancer</p> <p>7 risk from particles on surgical gloves, correct?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: I would be</p> <p>10 interested in reviewing the details of</p> <p>11 that determination. I don't know for a</p> <p>12 fact that cancer was not a consideration,</p> <p>13 but it certainly wasn't the most pressing</p> <p>14 consideration for surgical gloves.</p> <p>15 BY MR. HEGARTY:</p> <p>16 Q. Does corn starch present a risk of</p> <p>17 cancer?</p> <p>18 A. To my knowledge, no.</p> <p>19 I believe the difference is that</p> <p>20 corn starch can cause acute but not chronic</p> <p>21 inflammation, and typically it's a chronic</p> <p>22 inflammatory process that's considered a</p> <p>23 contributor to carcinogenesis.</p> <p>24 Q. If you look over at paragraph 52 of</p>
<p style="text-align: right;">Page 303</p> <p>1 by Eberl.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you find this article yourself</p> <p>5 through any search you did?</p> <p>6 A. No.</p> <p>7 Q. You know that that article makes no</p> <p>8 reference to cancer risk, correct?</p> <p>9 A. I do know. It has to do with talcum</p> <p>10 powder on gloves and surgical inflammation.</p> <p>11 Q. Are you aware that FDA has banned</p> <p>12 any type of powder, including corn starch, on</p> <p>13 gloves?</p> <p>14 A. I am aware that those -- that powder</p> <p>15 is not used on gloves. Again, surgical gloves are</p> <p>16 not cosmetics and, yes, I do believe that was an</p> <p>17 FDA decision.</p> <p>18 Q. And you know that Eberl and the FDA</p> <p>19 decision was based on the potential for powder on</p> <p>20 gloves to cause adhesions or fibrosis</p> <p>21 post-surgery, right?</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 THE WITNESS: I believe</p> <p>24 adhesions are one of several conditions</p>	<p style="text-align: right;">Page 305</p> <p>1 your report, you make reference there to the "J4-1</p> <p>2 method of asbestos detection."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. What is the J4-1 method?</p> <p>6 A. The J4-1 method, based on the</p> <p>7 documents I've reviewed, was an industry-based</p> <p>8 standard that was developed in part to forestall a</p> <p>9 more direct governmental or quasi-governmental</p> <p>10 standard setting process for asbestos testing.</p> <p>11 And it has been apparently controversial in this</p> <p>12 litigation and other contexts of determining</p> <p>13 whether something that is undetectable asbestos is</p> <p>14 actually no asbestos.</p> <p>15 Q. What testing methods should be used</p> <p>16 under the J4-1 method?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: I remember this</p> <p>19 was light microscopy and some other</p> <p>20 things. I don't remember the details</p> <p>21 right now. I've read the specifications,</p> <p>22 but I can't recall.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. What's the level of detection</p>

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1 under -- of asbestos under the J4-1 method?  
2 DR. THOMPSON: Object to form.  
3 THE WITNESS: That was hard  
4 to assess from what I read because I read  
5 correspondence with FDA and I believe  
6 some internal perhaps corporate documents  
7 that -- that talked about sort of one  
8 percent thresholds and half percent  
9 thresholds.  
10 And it was never actually  
11 clear to me exactly what was being --  
12 what was being measured in those; but  
13 there was, it seemed, some debate about  
14 whether those sensitivities were actually  
15 sufficient to declare some -- a talc --  
16 talcum powder product asbestos-free with  
17 industry asserting that they were  
18 sufficient and others asserting they were  
19 not.  
20 BY MR. HEGARTY:  
21 Q. How does the J4-1 method compare to  
22 the method Johnson & Johnson employs to test its  
23 talcum powder products?  
24 DR. THOMPSON: Object to form.

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1 THE WITNESS: I do not -- I  
2 do not know.  
3 BY MR. HEGARTY:  
4 Q. Is it your belief that Johnson &  
5 Johnson uses only the J4-1 method to test its baby  
6 powder?  
7 MS. PARFITT: Objection.  
8 DR. THOMPSON: Object to form.  
9 THE WITNESS: I would assume  
10 that Johnson & Johnson has advanced its  
11 detection methods beyond the J4-1 method  
12 today.  
13 BY MR. HEGARTY:  
14 Q. Have you investigated that issue?  
15 A. Have I investigated that? No.  
16 Again, the discussion of the J4-1 method related  
17 for purposes of my opinion mostly to the  
18 regulatory climate.  
19 Q. Do you believe you reviewed all the  
20 documents that have been produced by all the  
21 companies in this litigation as it relates to the  
22 development of the J4-1 method?  
23 A. No.  
24 DR. THOMPSON: Object to form.

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1 BY MR. HEGARTY:  
2 Q. As far as what documents you did  
3 review, those were documents provided to you by  
4 plaintiffs' counsel, correct?  
5 A. Yes.  
6 Q. Did you make any specific requests  
7 for particular documents about the development of  
8 the J4-1 method to plaintiffs' counsel?  
9 A. No.  
10 Q. Paragraph 54 refers to or you make  
11 -- you make the statement in paragraph 54 that:  
12 "Condom manufacturers voluntarily  
13 removed talc from their products because of  
14 ovarian cancer concerns."  
15 And you cite in that at the end of  
16 that paragraph footnote 19, which is a document  
17 PCPC MDL00062175.  
18 Do you see that?  
19 A. I see that.  
20 MR. HEGARTY: I'm going to  
21 mark as Exhibit 18 that very document you  
22 cited there.  
23 (Document marked for  
24 identification as Sage Exhibit 18.)

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1 BY MR. HEGARTY:  
2 Q. Can you show me in that document to  
3 what you're referring to as support for the  
4 statement you make in paragraph 54?  
5 A. (Reviews document.)  
6 This is, as you know, a compilation  
7 of papers. So it's -- unlike a single paper, it's  
8 very hard for me to review it quickly.  
9 Q. Okay.  
10 A. So I would have to look through this  
11 extensively for -- for that information.  
12 Q. Well, if you look over at page 15  
13 and 16 and 17, there are references there to the  
14 year of 1995, and you make reference to the year  
15 1995 in paragraph 54.  
16 So which of those documents there  
17 that include a date of 1995 did you rely upon to  
18 make the statement in paragraph 54?  
19 A. I can't identify one now. I can --  
20 I can say that I discussed this particular  
21 statement and particular issues of the motivations  
22 and concerns with respect to talcum powder on  
23 condoms with plaintiffs' counsel to -- to verify  
24 that I had the correct information, but I can't

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1 say -- I can't find the cite for you right now.  
 2 Q. Is your authority for that statement  
 3 plaintiffs' counsel?  
 4 MS. PARFITT: Objection.  
 5 Form.  
 6 DR. THOMPSON: Objection.  
 7 Form.  
 8 THE WITNESS: It did not  
 9 occur to me that this was a controversial  
 10 statement. I did my best to verify  
 11 through plaintiffs' counsel that it was  
 12 accurate because I want to make sure that  
 13 anything that I am putting in the report  
 14 is accurate. But --  
 15 BY MR. HEGARTY:  
 16 Q. Would you agree --  
 17 A. -- in retrospect, I would certainly  
 18 prefer to be citing a direct voluntary  
 19 reformulation document or a scientific study  
 20 rather than this particular footnoted timeline.  
 21 Q. If we look over at paragraph 70.  
 22 A. Are we back in my report?  
 23 Q. Back in your report, paragraph 70.  
 24 A. Sure.

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1 Q. You make several claims of Johnson &  
 2 Johnson being untruthful.  
 3 Are you saying that Johnson &  
 4 Johnson is lying on the talc -- the safety -- the  
 5 Facts About Talc website?  
 6 A. I was not comfortable with the  
 7 representations to consumers that Johnson &  
 8 Johnson made on that website with respect to  
 9 safety and purity, particularly the content and  
 10 tone that suggests that these questions about  
 11 potential health hazards have been definitively  
 12 resolved.  
 13 And my objections in the report are  
 14 most relevant to my conclusion that Johnson &  
 15 Johnson has not complied with its disclosure  
 16 obligations regarding safety not being  
 17 substantiated.  
 18 Q. Well, do you intend to testify in  
 19 this litigation about the veracity of Johnson &  
 20 Johnson as it relates to this website?  
 21 A. I would testify about the content of  
 22 this website and the ways in which this content is  
 23 at odds with Johnson & Johnson's self-regulatory  
 24 obligations and their specific regulatory

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1 obligations.  
 2 It is my opinion that this website,  
 3 which is very much consumer-facing and consumer  
 4 reassuring, is part of the labeling, if not the  
 5 label, of talc containing baby powder. Much of  
 6 this being mooted by the fact that talc containing  
 7 baby powder is no longer manufactured or sold in  
 8 the United States and Canada, but, of course,  
 9 people outside there could access this website.  
 10 Q. My question is a little bit  
 11 different.  
 12 And my question is: Do you intend  
 13 to testify in this lawsuit about the veracity,  
 14 which you know the definition of veracity, of  
 15 Johnson & Johnson?  
 16 A. I don't know the definition of  
 17 veracity for the purpose of this question.  
 18 Q. Well, you know the definition of  
 19 veracity is the truthfulness, correct? You're a  
 20 lawyer?  
 21 A. Yes. Yes, if we were to say  
 22 (laugh). I am a lawyer.  
 23 Q. Right. You are a lawyer. Let me  
 24 back -- let me start my question again.

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1 You know as a lawyer what the word  
 2 "veracity" means?  
 3 A. If are we using veracity as a  
 4 synonym for accuracy? It appears to me that your  
 5 question allies distinctions between Johnson &  
 6 Johnson's motivation and character and the  
 7 accuracy of information presented.  
 8 I am -- it would be part of my  
 9 testimony that the information presented is at  
 10 odds with the required consumer-facing labeling of  
 11 these products to be compliant with FDA  
 12 regulations.  
 13 Q. Do you intend to testify about the  
 14 intent of Johnson & Johnson in regards to any  
 15 document and, in particular, the Facts About Talc  
 16 website?  
 17 A. No.  
 18 Q. Do you intend to talk about the  
 19 motives of anyone at Johnson & Johnson as it  
 20 relates to talcum powder products?  
 21 A. No.  
 22 Q. Do you intend to testify that  
 23 Johnson & Johnson in setting up the Facts About  
 24 Talc website did so to lie to the public about the

<p style="text-align: right;">Page 314</p> <p>1 safety of talc?</p> <p>2 A. I am a student of institutions both</p> <p>3 governmental and corporate in these regulatory</p> <p>4 contexts. I am extremely interested in how a</p> <p>5 company as large and as experienced and as</p> <p>6 accomplished as Johnson &amp; Johnson has been in many</p> <p>7 domains could, in my opinion, fall so far short of</p> <p>8 its obligations in this respect.</p> <p>9 So would I offer a conclusion about</p> <p>10 corporate motivation? No.</p> <p>11 Were I to be questioned on it, might</p> <p>12 I offer thoughts about how this type of thing</p> <p>13 might happen? I'm really shocked that this could</p> <p>14 happen and that at this juncture between what is</p> <p>15 presented to consumers as a pure and proved safe</p> <p>16 product and the science and the regulatory</p> <p>17 obligation is very disturbing to me, and indeed</p> <p>18 that's part of my report and would be part of my</p> <p>19 testimony.</p> <p>20 Q. You state that the website omits any</p> <p>21 suggestion of uncertainty with respect to the</p> <p>22 overall safety or carcinogenic risk of talcum</p> <p>23 powder products.</p> <p>24 Do you see where I'm reading?</p>	<p style="text-align: right;">Page 316</p> <p>1 contention that the Facts About Talc website</p> <p>2 failed to provide a balanced discussion of the</p> <p>3 medical and scientific literature on the subject</p> <p>4 of talcum powder use and ovarian cancer?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: It's my opinion</p> <p>7 that the Facts About Talc website,</p> <p>8 insofar as it is accessible to and easily</p> <p>9 findable by someone who's using Johnson's</p> <p>10 Baby Powder and wondering whether there</p> <p>11 is risk or uncertainty, it is my position</p> <p>12 that in that connection, the website</p> <p>13 provides information that is at odds with</p> <p>14 Johnson &amp; Johnson's regulatory</p> <p>15 obligations.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. Do you have any opinion as to -- is</p> <p>18 it your opinion that the Facts About Talc website</p> <p>19 is not valid, fair and balanced?</p> <p>20 DR. THOMPSON: Objection.</p> <p>21 THE WITNESS: We're not</p> <p>22 discussing Fox News. I do not see what</p> <p>23 -- "fair and balanced" is not a phrase</p> <p>24 that I think relates to --</p>
<p style="text-align: right;">Page 315</p> <p>1 A. Yes. That was my read of the</p> <p>2 website as I encountered it personally.</p> <p>3 Q. So your position is that a proper</p> <p>4 analysis of the issues of talc and ovarian cancer</p> <p>5 must include a discussion of all authorities on</p> <p>6 the issue, correct?</p> <p>7 MS. PARFITT: Objection.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: Would you</p> <p>10 repeat that?</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. Sure.</p> <p>13 So it's your position that a proper</p> <p>14 analysis of the issues of talc and ovarian cancer,</p> <p>15 including as it relates to the Facts About Talc</p> <p>16 website, should include a discussion of all the</p> <p>17 authorities on the issue, correct?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: I am failing to</p> <p>20 see the connection between this question</p> <p>21 and prior questions. So I think I don't</p> <p>22 know how to answer it.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. Well, is it your statement --</p>	<p style="text-align: right;">Page 317</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Okay. Let me use a different</p> <p>3 phrase.</p> <p>4 That's not -- by the way, Fox News</p> <p>5 doesn't own the term "fair and balanced," right?</p> <p>6 A. They think they do, but we can leave</p> <p>7 that aside. (Laugh).</p> <p>8 Q. Well, is it your contention that the</p> <p>9 Facts About Talc website is misleading because it</p> <p>10 doesn't include contrary scientific and medical</p> <p>11 literature as it relates to the safety of talcum</p> <p>12 powder products?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: I'm doing my</p> <p>15 best to answer the questions you're</p> <p>16 asking.</p> <p>17 My -- my position is that,</p> <p>18 first of all, the Facts About Talc</p> <p>19 website omits any disclosure of</p> <p>20 uncertainty, which is a specific</p> <p>21 regulatory obligation, and, frankly, is</p> <p>22 so conclusory that it might even negate</p> <p>23 some other statement about an uncertainty</p> <p>24 that Johnson &amp; Johnson might make.</p>

<p style="text-align: right;">Page 318</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Have you read the JAMA O'Brien 2020</p> <p>3 article on talcum powder and ovarian cancer?</p> <p>4 A. I am pretty sure I have, but I would</p> <p>5 love to be refreshed on any one of these.</p> <p>6 Q. You don't comment about that in your</p> <p>7 report, do you?</p> <p>8 A. Again, presumably, you're asking me</p> <p>9 this because I -- because I don't.</p> <p>10 My -- my comments on the -- on the</p> <p>11 scientific literature go through a timeline and</p> <p>12 looking at key studies, but I do believe I've seen</p> <p>13 that. I'd love to see it again if you want to</p> <p>14 show it to me.</p> <p>15 Q. If you look at paragraph 71 of your</p> <p>16 report, is your only authority for the statements</p> <p>17 you make what you cite at the end "21 CFR 740.1 et</p> <p>18 seq."?</p> <p>19 A. So it is a combination of the nature</p> <p>20 of cosmetics regulation compared to, say, the</p> <p>21 nature of drug regulation, and a central aspect of</p> <p>22 my analysis and opinions is that these two</p> <p>23 regulatory regimes are quite different.</p> <p>24 Mostly because in the -- in terms of</p>	<p style="text-align: right;">Page 320</p> <p>1 uncertainty.</p> <p>2 The only way to -- the only</p> <p>3 disagreement -- well, the only difference</p> <p>4 of opinion in terms of risk and</p> <p>5 uncertainty is whether uncertainty is</p> <p>6 subsumed in risk in the -- in the</p> <p>7 economics literature.</p> <p>8 Once one teases the two things</p> <p>9 out, I mean, if we could put it in the</p> <p>10 national defense context and talk about</p> <p>11 the known unknowns and the unknown</p> <p>12 unknowns, but the uncertainty is the</p> <p>13 central regulatory obligation of 740.10.</p> <p>14 So I don't need more authority</p> <p>15 than it's explicit in the regulation.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. My question is a little bit</p> <p>18 different. Listen to my question, Doctor.</p> <p>19 Is the word "uncertainty" used</p> <p>20 anywhere within 21 CFR 740.10 or anywhere in the</p> <p>21 cosmetic regulations?</p> <p>22 MS. PARFITT: Objection.</p> <p>23 DR. THOMPSON: Objection.</p> <p>24 Form.</p>
<p style="text-align: right;">Page 319</p> <p>1 drug authorities, FDA's role, its preventive role</p> <p>2 and all of its regulatory authorities are far more</p> <p>3 detailed, far more self-executing, and are much</p> <p>4 more consistent with a compliance mind-set among</p> <p>5 the regulated entities.</p> <p>6 Whereas, for cosmetics regulation,</p> <p>7 the principal obligations are informational and</p> <p>8 virtually all of the requirements are for</p> <p>9 self-regulation that results in safe products.</p> <p>10 Q. Can you cite for me any authority</p> <p>11 saying that there is a low threshold for</p> <p>12 disclosure risk?</p> <p>13 A. That is my conclusion based on the</p> <p>14 lack of offsetting benefit for cosmetic, and that</p> <p>15 is -- and that's an established position in the</p> <p>16 literature, but I don't cite specifically.</p> <p>17 Q. And you already told us that you</p> <p>18 cannot cite any authority in the regulatory</p> <p>19 setting that uses the word "uncertainty" when it</p> <p>20 comes to the labeling of cosmetics, correct?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: Disagree in</p> <p>23 that the 740.10 obligation is about</p> <p>24 safety not being determined, which is</p>	<p style="text-align: right;">Page 321</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. For Johnson's Baby Powder, when</p> <p>4 should it have carried a risk of a warning -- when</p> <p>5 should it have carried a warning of a risk of</p> <p>6 ovarian cancer?</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I think, at a</p> <p>9 minimum, by the early 1970s, it should</p> <p>10 have carried a -- a warning of a</p> <p>11 potential health hazard. That was</p> <p>12 informed by what was already worrisome</p> <p>13 literature on ovarian cancer risk.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Should a cosmetic manufacturer warn</p> <p>16 of a risk that does not exist?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: Again, a risk</p> <p>19 is a known probability. If the known</p> <p>20 probability is zero, then there is no</p> <p>21 risk and there's no warning obligation.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Likewise, is a cosmetic -- is a</p> <p>24 cosmetic manufacturer required to warn about a</p>



<p style="text-align: right;">Page 322</p> <p>1 health hazard that does not exist?</p> <p>2 DR. THOMPSON: Object to form.</p> <p>3 THE WITNESS: So to answer</p> <p>4 these questions, best -- best to use the</p> <p>5 actual regulatory language. So we can --</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. Well, do you need regulatory</p> <p>8 language to say?</p> <p>9 A. Yes. Actually, when one is</p> <p>10 paraphrasing an obligation, yeah.</p> <p>11 So, you know, talks about "necessary</p> <p>12 or appropriate to prevent a health hazard that may</p> <p>13 be associated with the product."</p> <p>14 So if you are saying that there is</p> <p>15 no probability, no possibility that a health</p> <p>16 hazard may be associated with a product, then</p> <p>17 there is no warning obligation.</p> <p>18 Q. Okay. If you look over at paragraph</p> <p>19 77.</p> <p>20 A. Uh-huh.</p> <p>21 Q. You talk about 740.1 in that</p> <p>22 paragraph, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Can you cite for me any published</p>	<p style="text-align: right;">Page 324</p> <p>1 discussing and the reason we're here,</p> <p>2 there are many, many scientific studies</p> <p>3 that show non- -- non-1 confidence</p> <p>4 intervals that -- that raise, I think,</p> <p>5 indisputable concerns about possible</p> <p>6 health hazards which means</p> <p>7 nonsubstantiation for safety.</p> <p>8 Is there a definitive</p> <p>9 hierarchy? No, and it's going to be</p> <p>10 depend on context. But, you know,</p> <p>11 something that has never been</p> <p>12 studied that nobody is really thinking,</p> <p>13 much substantiation -- and there's no</p> <p>14 suggestion that there's an injury,</p> <p>15 substantiation for safety may be</p> <p>16 accomplished in a relatively</p> <p>17 straightforward way.</p> <p>18 But when we have good science</p> <p>19 that shows a possible increased risk of a</p> <p>20 substantial degree for a fatal disease</p> <p>21 and we have this repeatedly over decades,</p> <p>22 I don't think it's seriously in doubt</p> <p>23 that -- that talcum powder products</p> <p>24 haven't been substantiated for safety.</p>
<p style="text-align: right;">Page 323</p> <p>1 authorities that identify the studies that must be</p> <p>2 done to adequately substantiate the safety of a</p> <p>3 product?</p> <p>4 DR. THOMPSON: Object to form.</p> <p>5 THE WITNESS: I'm sorry. I</p> <p>6 think -- I think that the paragraph -- I</p> <p>7 thought you said paragraph 77, which is</p> <p>8 about --</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I'm sorry. 78.</p> <p>11 A. All right.</p> <p>12 Q. Look at paragraph 78.</p> <p>13 A. Sorry about that.</p> <p>14 Q. Can you cite for me any published</p> <p>15 authority that identifies the study that must be</p> <p>16 done to adequately substantiate the safety of a</p> <p>17 cosmetic product?</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: There are, I</p> <p>20 believe, documents that nondefinitively</p> <p>21 and nonexclusively and noncomprehensively</p> <p>22 suggest the sorts of things that could</p> <p>23 build into substantiation for safety.</p> <p>24 But remember what we've been</p>	<p style="text-align: right;">Page 325</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. Listen to my question. That's not</p> <p>3 what I asked you, Doctor.</p> <p>4 You make reference to the 740.10(a)</p> <p>5 and talk about that "each ingredient used in a</p> <p>6 cosmetic and each finished cosmetic product shall</p> <p>7 be adequately substantiated for safety prior to</p> <p>8 marketing."</p> <p>9 My question is: Is there a written</p> <p>10 published standard for what a manufacturer must --</p> <p>11 for what tests a manufacturer of a cosmetic must</p> <p>12 do to substantiate the safety of that product</p> <p>13 before marketing?</p> <p>14 A. My opinion is that substantiation</p> <p>15 for safety is contextual, and that there have been</p> <p>16 statements from time to time in particular</p> <p>17 contexts, but nothing that I regard as definitive.</p> <p>18 Q. The manufacturer must assess the</p> <p>19 studies and determine if the cosmetic safety is</p> <p>20 substantiated, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You understand that Johnson &amp;</p> <p>23 Johnson has repeatedly done so as to Johnson's</p> <p>24 Baby Powder, Shower to Shower, correct?</p>

<p style="text-align: right;">Page 326</p> <p>1 DR. THOMPSON: Object to form.</p> <p>2 THE WITNESS: I understand</p> <p>3 those are Johnson &amp; Johnson's conclusions</p> <p>4 from the studies that it has done.</p> <p>5 It is also my understanding</p> <p>6 that Johnson &amp; Johnson has not</p> <p>7 participated actively in efforts to</p> <p>8 further study its product.</p> <p>9 If we're just talking -- if</p> <p>10 we're talking only about asbestos, that's</p> <p>11 one piece of this. If we're talking</p> <p>12 about the overall connections between</p> <p>13 talc -- perineal use of talcum powder</p> <p>14 products and ovarian cancer, it goes way</p> <p>15 beyond asbestos testing.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. Well, you have reviewed, as we</p> <p>18 talked earlier, about the 2020 Johnson's Baby</p> <p>19 Talcum Powder: A Comprehensive Review document</p> <p>20 dated March 17, 2020, correct?</p> <p>21 A. Yes.</p> <p>22 Q. That's the last document in the</p> <p>23 notebook you have in front of you, correct?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 328</p> <p>1 DR. THOMPSON: Object to form.</p> <p>2 THE WITNESS: I don't believe</p> <p>3 Johnson &amp; Johnson has done that.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. You disagree with Johnson &amp; Johnson,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. You're making your own subjective</p> <p>11 judgment on whether safety has been substantiated,</p> <p>12 correct?</p> <p>13 DR. THOMPSON: Object to form.</p> <p>14 THE WITNESS: No. I am making</p> <p>15 an expert determination based on many</p> <p>16 scientific determinations and compendia</p> <p>17 and other regulatory judgments that raise</p> <p>18 persistent and serious questions about</p> <p>19 substantiation for safety, such that, no,</p> <p>20 I do not believe that substantiation for</p> <p>21 safety has occurred.</p> <p>22 And I conclude that the 740.10</p> <p>23 obligation of disclosure of uncertainty</p> <p>24 is operative.</p>
<p style="text-align: right;">Page 327</p> <p>1 Q. And you -- have you reviewed the</p> <p>2 testimony of Johnson &amp; Johnson's chief medical</p> <p>3 officer, Dr. Kuffner?</p> <p>4 A. I did not read that -- if that was</p> <p>5 deposition testimony, I did not read that</p> <p>6 deposition in detail.</p> <p>7 Q. You understand that Johnson &amp;</p> <p>8 Johnson currently and has always concluded that</p> <p>9 its talcum powder products are safe and that the</p> <p>10 safety is substantiated?</p> <p>11 DR. THOMPSON: Object to form.</p> <p>12 THE WITNESS: I clearly</p> <p>13 understand that is the company's</p> <p>14 position. I do not understand the basis</p> <p>15 for that judgment.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. The regulations and authorities you</p> <p>18 cite all provide that the manufacturer is to make</p> <p>19 this determination.</p> <p>20 You understand that, right?</p> <p>21 A. That's not a statement of deference.</p> <p>22 That's a statement of obligation.</p> <p>23 Q. Johnson &amp; Johnson has done so.</p> <p>24 You understand that?</p>	<p style="text-align: right;">Page 329</p> <p>1 BY MR. HEGARTY:</p> <p>2 Q. And you think that a jury should</p> <p>3 believe you over Johnson &amp; Johnson where you first</p> <p>4 started looking at this issue three months ago; is</p> <p>5 that correct?</p> <p>6 DR. THOMPSON: Objection.</p> <p>7 THE WITNESS: I think juries</p> <p>8 are entitled to conclude what juries</p> <p>9 conclude.</p> <p>10 I think the existence of this</p> <p>11 regulatory obligation and its connection</p> <p>12 to the information environment that</p> <p>13 Johnson &amp; Johnson has created around this</p> <p>14 one legacy product is something from</p> <p>15 which juries may draw exactly the</p> <p>16 conclusion that I have.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You have never in any publication of</p> <p>19 yours cited to 21 CFR 740.1, correct?</p> <p>20 A. Are we on .1 or .10? But the answer</p> <p>21 would be for both of them, no.</p> <p>22 Q. And you've never given a</p> <p>23 presentation where you have talked about 21 CFR</p> <p>24 740.1 or 740.10, or any cosmetic regulation that</p>

<p style="text-align: right;">Page 330</p> <p>1 you're talking about in this report, correct?</p> <p>2 A. Correct.</p> <p>3 MR. HEGARTY: Let's go ahead</p> <p>4 and take a break.</p> <p>5 (Recess: 3:02 p.m. -</p> <p>6 3:17 p.m.)</p> <p>7 MR. HEGARTY: We are back on</p> <p>8 the record.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I wanted to look at next -- look</p> <p>11 next at paragraph 81 of your expert report.</p> <p>12 A. Uh-huh.</p> <p>13 Q. In the first line of that paragraph</p> <p>14 you say that:</p> <p>15 "Johnson &amp; Johnson has a legal duty</p> <p>16 to account -- to take account of 'new information'</p> <p>17 putting the safety of its talcum powder products</p> <p>18 in question, even if the information is itself not</p> <p>19 conclusive."</p> <p>20 What is the authority for or what is</p> <p>21 the legal duty? Where -- what statute, what</p> <p>22 regulation where that legal duty found?</p> <p>23 A. Okay. So that -- that authority</p> <p>24 comes -- comes right out of 740.10(b), you know,</p>	<p style="text-align: right;">Page 332</p> <p>1 What was it about the '70s from your</p> <p>2 standpoint would have triggered the need to</p> <p>3 provide a warning with regard to health risk with</p> <p>4 talcum powder products?</p> <p>5 A. So as you know, in the 1970s, cancer</p> <p>6 risks from asbestos became, you know, of general</p> <p>7 concern, but environmental cancer risks became a</p> <p>8 general concern. Going into the history of</p> <p>9 cancer, this is the period, and it's no</p> <p>10 coincidence that this is, you know, the Nixon</p> <p>11 Administration's, you know, the EPA, motor vehicle</p> <p>12 safety. There's a whole bunch of sort of kind of</p> <p>13 post-NASA investments in scientific-based health</p> <p>14 and safety regulations, the OSHA Act, the</p> <p>15 Occupational Safety and Health Act.</p> <p>16 So, you know, this is a period when</p> <p>17 people are looking at potential environmental</p> <p>18 triggers for various cancers, and that's when many</p> <p>19 of these studies are done. And more of them are</p> <p>20 being done, and they're not motivated by anything</p> <p>21 other than genuine scientific curiosity on about</p> <p>22 environmental exposure and its health</p> <p>23 consequences.</p> <p>24 Q. Assume for purpose of my question</p>
<p style="text-align: right;">Page 331</p> <p>1 it's in the appendix on page 39 of the report that</p> <p>2 says "An ingredient or product may at any time</p> <p>3 have its safety brought into question by new</p> <p>4 information that is itself not conclusive."</p> <p>5 Q. Okay.</p> <p>6 A. And that's intended to convey an</p> <p>7 ongoing duty of the manufacturer to substantiate</p> <p>8 safety. We're not talking about a one-shot, and</p> <p>9 meaning specifically that new information that</p> <p>10 might suggest that -- that the prior assumed</p> <p>11 substantiation was inaccurate needs to be taken</p> <p>12 account of and a decision, again, made whether to</p> <p>13 disclose that safety hasn't been determined.</p> <p>14 And this is exactly the sorts of</p> <p>15 thing you would expect to become operative in a</p> <p>16 situation like ovarian cancer developing from --</p> <p>17 from -- from talcum powder in that we have latency</p> <p>18 and a relatively uncommon condition and, you know,</p> <p>19 something that might have appeared safe in, you</p> <p>20 know, 1950 might not appear safe by, you know,</p> <p>21 1975.</p> <p>22 Q. And you made reference earlier to</p> <p>23 the fact, according to you, that warning would</p> <p>24 have been required in the '70s.</p>	<p style="text-align: right;">Page 333</p> <p>1 that there is no asbestos in talcum powder</p> <p>2 products.</p> <p>3 Would that change your opinions in</p> <p>4 this case?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: If, in fact,</p> <p>7 there were zero fibers of asbestos or of</p> <p>8 asbestiform talc in products, it would</p> <p>9 change some, but not all, of my opinions;</p> <p>10 and it certainly would not change my</p> <p>11 opinions regarding nonsubstantiation for</p> <p>12 safety.</p> <p>13 BY MR. HEGARTY:</p> <p>14 Q. In paragraph 85, you make reference</p> <p>15 to the IARC Monograph 100C, which we marked and is</p> <p>16 sitting to your right, and you make the statement</p> <p>17 in that paragraph that says that:</p> <p>18 "The Monograph provides a detailed</p> <p>19 discussion of occupational exposures to asbestos</p> <p>20 and talc in which inhalation presents the primary</p> <p>21 exposure, but this is not the only purpose."</p> <p>22 That's not correct, is it? That</p> <p>23 monograph makes no reference to occupational</p> <p>24 exposure -- studies of occupational exposure to</p>

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1 talc, does it?

2 DR. THOMPSON: Object to form.

3 THE WITNESS: I would have to

4 -- I would have to go back and look if I

5 -- if I'm incorrect about -- well, no, in

6 the sense that it covers both asbestos

7 and fibrous product, I would have to

8 stand by that because that's all I meant

9 by the statement. It was -- it was talc

10 fibers on a par with asbestos.

11 So that is correct.

12 BY MR. HEGARTY:

13 Q. Are you aware that with regard to

14 IARC's findings as it relates to asbestos and

15 ovarian cancer that none of the studies they

16 evaluated involved exposure to talcum powder?

17 DR. THOMPSON: Object to form.

18 THE WITNESS: Would you

19 repeat that?

20 BY MR. HEGARTY:

21 Q. Sure.

22 A. I couldn't tell.

23 Q. Are you aware that with regard to

24 IARC's findings as it relates to asbestos and

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1 ovarian cancer, particularly the studies they

2 looked at, none of those studies involved exposure

3 or alleged exposure to asbestos from talcum powder

4 products?

5 DR. THOMPSON: Same objection.

6 THE WITNESS: I don't know

7 that. I would have to go back and look.

8 They may have looked at actual or

9 potential sources of asbestos.

10 BY MR. HEGARTY:

11 Q. And do you recall that the IARC's

12 findings as it relates to asbestos and ovarian

13 cancer were based primarily on five cohorts --

14 five heavy occupational cohort studies --

15 DR. THOMPSON: Objection.

16 BY MR. HEGARTY:

17 Q. -- of workers exposed to raw

18 asbestos --

19 DR. THOMPSON: Objection.

20 BY MR. HEGARTY:

21 Q. -- in their employment?

22 DR. THOMPSON: Objection.

23 THE WITNESS: I have seen

24 discussions about occupational asbestos

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1 exposure. I've seen the back-and-forth

2 about the advantages and disadvantages of

3 various designs and whether occupational

4 exposure to asbestos is relevant to

5 assessment of the studies regarding

6 talcum powder use exposure to whatever

7 the things are in talcum powder that

8 predispose to -- to ovarian cancer.

9 I've seen all of that

10 discussion. I don't think any of it

11 changes my views.

12 My views are, you know,

13 fundamentally based on what I conclude is

14 the presence of asbestos and asbestiform

15 particles in talc and on the failure of

16 Johnson & Johnson to meet its regulatory

17 obligations regarding uncertainty.

18 BY MR. HEGARTY:

19 Q. Did you read the individual studies

20 on asbestos exposure and ovarian cancer cited by

21 the IARC Monograph 100C?

22 A. On asbestos exposure and ovarian

23 cancer? I'd have to go look and see which those

24 were.

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1 Q. Do you recall looking at the

2 monograph and pulling the studies that it cites

3 and reading the actual studies themselves?

4 A. I did not pull underlying studies

5 from -- from this IARC report. Whether there's

6 some overlap between studies that I reviewed in

7 detail and these I can't say without doing the

8 crosswalk.

9 Q. Are you aware of the concern with

10 regard to the studies looking at asbestos exposure

11 and ovarian cancer risk of misclassification

12 between peritoneal mesothelioma and ovarian

13 cancer?

14 DR. THOMPSON: Object to form.

15 THE WITNESS: I cannot recall

16 an extensive discussion that -- of

17 potential confounders between peritoneal

18 mesothelioma and ovarian cancer, and I

19 invite you to show me something if you

20 have something to show me.

21 I have trouble seeing why that

22 would change the overall views that have

23 been expressed regarding from good

24 studies and large -- large organizational

<p style="text-align: right;">Page 338</p> <p>1 conclusions that there is a substantial</p> <p>2 increased risk as a result of talcum</p> <p>3 powder exposure perineally.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. As a doctor, do you understand</p> <p>6 whether there's any difficulties in diagnosing</p> <p>7 ovarian cancer from peritoneal mesothelioma?</p> <p>8 DR. THOMPSON: Object to form.</p> <p>9 THE WITNESS: As a -- as a</p> <p>10 matter cellular pathology, I've never</p> <p>11 considered the question.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. You're not a pathologist, right?</p> <p>14 A. No.</p> <p>15 Q. If we look over at paragraph 121 of</p> <p>16 your report, on what documents do you rely for</p> <p>17 your statement in paragraph 121 that "Johnson &amp;</p> <p>18 Johnson manipulated asbestos testing"?</p> <p>19 A. I was -- I was concerned by the</p> <p>20 back-and-forth regarding what the sensitivity</p> <p>21 thresholds should be with -- with whatever FDA</p> <p>22 regarded as the acceptable assay method.</p> <p>23 So if we look, again, that 121 is as</p> <p>24 it says in some paragraph and it derives from the</p>	<p style="text-align: right;">Page 340</p> <p>1 Q. Did you read -- have you read all</p> <p>2 the associated documents in Johnson &amp; Johnson</p> <p>3 testimony with regard to the document referenced</p> <p>4 in your paragraph 116?</p> <p>5 A. I doubt I have.</p> <p>6 Q. Is it your testimony that Johnson &amp;</p> <p>7 Johnson intended to deceive by its testing and</p> <p>8 publicity as it relates to asbestos testing?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: As we've</p> <p>11 discussed previously, my testimony does</p> <p>12 not go to Johnson &amp; Johnson's corporate</p> <p>13 motive or intent.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. Do all test methods for asbestos in</p> <p>16 talcum powder products have limits of detection?</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: All practical</p> <p>19 methods would. Conceptually, not</p> <p>20 necessarily. If you look at everything,</p> <p>21 in everything you presumably find it.</p> <p>22 Fibers are fibers, and they are</p> <p>23 conceptually detectable.</p> <p>24 BY MR. HEGARTY:</p>
<p style="text-align: right;">Page 339</p> <p>1 paragraphs that precede it.</p> <p>2 So if we go -- if we go back and</p> <p>3 review that, you see a proposed regulation in 1973</p> <p>4 calling for an amphibole 99.9 percent purity</p> <p>5 standard and 99.99 for chrysotile and using</p> <p>6 polarized microscopy, and then correspondence</p> <p>7 subsequently involving Johnson &amp; Johnson and FDA</p> <p>8 and the Personal Care Products Council, which</p> <p>9 including the statement in paragraph 116.</p> <p>10 "We believe it is critical for the"</p> <p>11 then predecessor -- the predecessor organization</p> <p>12 "to now recommend these methods to the FDA before</p> <p>13 the art advances to more sophisticated techniques</p> <p>14 with higher levels of sensitization."</p> <p>15 Which I think a fair reading of that</p> <p>16 is that Johnson &amp; Johnson prefers to have no</p> <p>17 asbestos detectable in its products.</p> <p>18 And certainly if one combines that</p> <p>19 even with the current website, which I have to say</p> <p>20 really does concern me, these statements about</p> <p>21 purity and the absence of contamination, I think</p> <p>22 there is a historical story here that is a -- I</p> <p>23 think it would be fair to characterize it as</p> <p>24 woeful ignorance.</p>	<p style="text-align: right;">Page 341</p> <p>1 Q. Is there a test method that shows</p> <p>2 that no detection means none?</p> <p>3 DR. THOMPSON: Object to form.</p> <p>4 THE WITNESS: Is there a test</p> <p>5 method that means none detected means</p> <p>6 none? In this context?</p> <p>7 BY MR. HEGARTY:</p> <p>8 Q. Correct.</p> <p>9 A. There should be test methods that</p> <p>10 can be applied to small samples that will say that</p> <p>11 none detected in the sample means none in the</p> <p>12 sample, but we're always in a sampling situation.</p> <p>13 So, yes, there will always be</p> <p>14 choices in terms of sensitivity and detection</p> <p>15 limits as a practical matter.</p> <p>16 Q. So you acknowledge that with regard</p> <p>17 to any testing method that humans are capable of</p> <p>18 here in 2021, there will be limits of detection,</p> <p>19 correct?</p> <p>20 DR. THOMPSON: Object to form.</p> <p>21 THE WITNESS: I think there</p> <p>22 are different forms of limits, and here</p> <p>23 -- here this ties back for me to -- to</p> <p>24 disclosures of uncertainties as well as</p>



<p style="text-align: right;">Page 342</p> <p>1 to disclosures of -- of known risks. In</p> <p>2 the -- in the sense that there's no</p> <p>3 suggestion, for example, on the Johnson &amp;</p> <p>4 Johnson website that other than, you</p> <p>5 know, one lot that in Johnson &amp; Johnson's</p> <p>6 retelling was mistakenly characterized as</p> <p>7 containing asbestos by FDA's contract</p> <p>8 labs, that there could ever be asbestos</p> <p>9 in Johnson &amp; Johnson's talc.</p> <p>10 I think that is, in some ways,</p> <p>11 Johnson &amp; Johnson is the one asserting</p> <p>12 the position you're ascribing to me in</p> <p>13 that question. They're the ones who are</p> <p>14 claiming that there are no -- there are</p> <p>15 no limits. That, in fact, they can</p> <p>16 simply say there is nothing because we</p> <p>17 didn't find it in the way we looked.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. Do you have an opinion as to what</p> <p>20 testing methods of talc for asbestos are</p> <p>21 acceptable to substantiate the safety of the</p> <p>22 product as it relates to asbestos?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Again, that's</p>	<p style="text-align: right;">Page 344</p> <p>1 matter Johnson &amp; Johnson has never</p> <p>2 accounted for that in the ways that the</p> <p>3 regulation requires.</p> <p>4 BY MR. HEGARTY:</p> <p>5 Q. You already told us that you don't</p> <p>6 know the testing methods that Johnson &amp; Johnson</p> <p>7 has used over the last 50 years to test its talc</p> <p>8 for the presence of asbestos, correct?</p> <p>9 A. I know the correspondence regarding</p> <p>10 J4-1, regarding some of these other thresholds, I</p> <p>11 know are fairly significant; and these paragraphs</p> <p>12 documented disagreement between the company's</p> <p>13 position on sensitivity and the FDA's proposed</p> <p>14 rule. A lot of harm can be caused by the</p> <p>15 differences between those testing standards.</p> <p>16 Q. Not my question.</p> <p>17 My question is: Do you agree that</p> <p>18 you don't know what testing methods that Johnson &amp;</p> <p>19 Johnson used over the last 50 years to test its</p> <p>20 talcum powder products for the presence of</p> <p>21 asbestos --</p> <p>22 DR. THOMPSON: Object to form.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. -- correct?</p>
<p style="text-align: right;">Page 343</p> <p>1 not the -- that's not an expert opinion</p> <p>2 that I'm giving.</p> <p>3 That said, I've seen the</p> <p>4 descriptions of the last couple of years</p> <p>5 of sort of FDA efforts to improve</p> <p>6 asbestos detection, and I don't think any</p> <p>7 of that has resulted in a definitive</p> <p>8 statement, but perhaps one is</p> <p>9 forthcoming.</p> <p>10 BY MR. HEGARTY:</p> <p>11 Q. If you don't have an opinion as to</p> <p>12 what testing method is appropriate to substantiate</p> <p>13 that there's no asbestos in talcum powder</p> <p>14 products, how do you know that that method is not</p> <p>15 being used today?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I have an</p> <p>18 opinion that over the relevant timeline</p> <p>19 history of when the women plaintiffs</p> <p>20 counsel represents have been exposed to</p> <p>21 Johnson's Baby Powder, the testing</p> <p>22 methods used were insufficient to rule</p> <p>23 out levels of asbestos that could cause</p> <p>24 carcinogenesis, and that as a regulatory</p>	<p style="text-align: right;">Page 345</p> <p>1 A. I could not map for you detection</p> <p>2 methods used by Johnson &amp; Johnson in each decade</p> <p>3 over the last 50 years.</p> <p>4 Q. And it's not your testimony in this</p> <p>5 case as far as what testing methods must be done</p> <p>6 as it relates to asbestos, looking for asbestos in</p> <p>7 talc, to substantiate the safety of that product</p> <p>8 as it relates to asbestos, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: So the -- so,</p> <p>11 again, forgive me. I'm really not trying</p> <p>12 to be argumentative here.</p> <p>13 Substantiation for safety is</p> <p>14 not a matter of detectable asbestos.</p> <p>15 Substantiation for safety is:</p> <p>16 Does perineal use of baby powder -- of</p> <p>17 talc containing baby powder products</p> <p>18 increase a woman's chance of contracting</p> <p>19 ovarian cancer?</p> <p>20 And that is a health hazard,</p> <p>21 which, if that has not been proven to be</p> <p>22 a zero risk or perhaps such a small risk</p> <p>23 that we could not consider it clinically</p> <p>24 significant, in that case, at a minimum,</p>

<p style="text-align: right;">Page 346</p> <p>1 disclosure of nonsubstantiation for                  2 safety has to be made under the                  3 regulation.                  4 I don't want to get -- I mean,                  5 the presence of asbestos to me is                  6 compelling. The presence of asbestiform                  7 talc is compelling.                  8 Those components, in my expert                  9 opinion, place regulatory obligations of                  10 disclosure and warning and instruction,                  11 some type of mitigation effort by the                  12 company, but some sort of mitigation                  13 obligation on the company, which I don't                  14 think the company has ever complied with                  15 or even seriously attempted to consider                  16 and -- but those are independent of this                  17 740.10 obligation regarding uncertainty.                  18 And every time there's a new                  19 study, every time there's a new report,                  20 every time there's a regulatory finding                  21 by a non-U.S. regulator, all of this in                  22 the paragraph that you asked me about a                  23 few minutes ago constitutes new                  24 information, of which the company is</p>	<p style="text-align: right;">Page 348</p> <p>1 circumstances, it is Johnson &amp; Johnson's                  2 obligation to have done a whole lot more                  3 study to this than they apparently have,                  4 and that would be my testimony.                  5 BY MR. HEGARTY:                  6 Q. But your -- and that testimony is,                  7 according to your standard, as of 2021, to meet                  8 the obligations under your interpretation of the                  9 cosmetic regulations, Johnson &amp; Johnson must prove                  10 a negative, that talcum powder is incapable of                  11 causing ovarian cancer, correct?                  12 DR. THOMPSON: Object to form.                  13 THE WITNESS: No, I did not                  14 say that.                  15 BY MR. HEGARTY:                  16 Q. So it's not your testimony that                  17 Johnson &amp; Johnson's obligation of the regulation                  18 is to prove that talcum powder use cannot cause                  19 ovarian cancer, correct?                  20 DR. THOMPSON: Object to form.                  21 THE WITNESS: Johnson &amp;                  22 Johnson's obligation under 740.10 is                  23 either to prove that use of talcum powder                  24 products does not cause ovarian cancer,</p>
<p style="text-align: right;">Page 347</p> <p>1 legally obligated to take account.                  2 BY MR. HEGARTY:                  3 Q. Under your standard, it's Johnson &amp;                  4 Johnson's obligation to prove that talcum powder                  5 use does not cause ovarian cancer, correct?                  6 MS. PARFITT: Objection.                  7 Form.                  8 DR. THOMPSON: Object to form.                  9 THE WITNESS: If there were                  10 no studies suggesting that it did and no                  11 reason to think that it would, it's not                  12 in my reading of cosmetic self-regulation                  13 incumbent to specifically disprove every                  14 conceivable harm.                  15 The obligation is to                  16 substantiate safety for the product as                  17 labeled and as reasonably and customarily                  18 used. It's the same as the warning                  19 standard, in essence.                  20 But in light of 1970s to                  21 today, roughly 40 years of sustained                  22 scientific interest in and controversy                  23 regarding ovarian cancer risk from                  24 perineal talcum powder, yes, under those</p>	<p style="text-align: right;">Page 349</p> <p>1 which today in 2021 it will be unable to                  2 do, or to put in place, as it should have                  3 for many, many years, the required                  4 disclosure of "safety not determined," or                  5 as it has done for whatever reason it                  6 asserts to reformulate the product so                  7 it's not sold to the United States or                  8 Canada. And I wish it weren't sold                  9 anywhere in the world.                  10 BY MR. HEGARTY:                  11 Q. But you would agree, at least on                  12 your medical background, as it relates to exposure                  13 and disease, it's impossible for anybody to prove                  14 a negative, correct?                  15 DR. THOMPSON: Objection.                  16 Form.                  17 THE WITNESS: I can't really                  18 answer that question.                  19 There are negatives that can                  20 be proved to high degrees of statistical                  21 probability. In the sense of conditions                  22 that are extremely evident that have no                  23 other causes, you know, there are ways to                  24 prove a negative.</p>

<p style="text-align: right;">Page 350</p> <p>1           When there is, you know, a</p> <p>2           condition that is multifactorial, when</p> <p>3           there is a condition that has latency,</p> <p>4           there's conditions that suit a lot of --</p> <p>5           a lot of cancer development, then, yes,</p> <p>6           it would be very, very hard to prove a</p> <p>7           negative.</p> <p>8           And yet even there, we have</p> <p>9           epidemiological studies all the time that</p> <p>10          are done and, frankly, you know, drug and</p> <p>11          device studies that are done -- well,</p> <p>12          drug studies that are done all the time</p> <p>13          that in essence demonstrate to a level of</p> <p>14          statistical certainty that there's no</p> <p>15          increased risk.</p> <p>16       BY MR. HEGARTY:</p> <p>17          Q.    You comment in this part of your</p> <p>18          report beginning at page 19 about CIR; is that</p> <p>19          correct?</p> <p>20          A.    Yes.</p> <p>21          Q.    Are you an expert on the process by</p> <p>22          which CIR reviews cosmetic ingredients?</p> <p>23          A.    I've read a fair amount about it in</p> <p>24          connection with this case.</p>	<p style="text-align: right;">Page 352</p> <p>1   testimony referenced in your materials.</p> <p>2           Did you read his testimony?</p> <p>3          A.    If we can point me to it, I might</p> <p>4          remember. I don't -- I don't -- just so you know,</p> <p>5          I remember things by substance generally, not by</p> <p>6          title.</p> <p>7          Q.    He was the head of the CIR during</p> <p>8          the time it reviewed talc.</p> <p>9           Do you recall that?</p> <p>10         A.    I do recall reading -- reading some</p> <p>11         testimony about -- about the CIR -- the specifics</p> <p>12         of the CIR talc review. I don't recall reading</p> <p>13         his testimony.</p> <p>14         Q.    Are you aware that he testified that</p> <p>15         the CIR properly reviewed talc?</p> <p>16         A.    I'm not aware of that. It wouldn't</p> <p>17         surprise me.</p> <p>18         Q.    Are you aware he testified that the</p> <p>19         CIR review was independent of any industry or</p> <p>20         other group?</p> <p>21               DR. THOMPSON: Object to form.</p> <p>22               THE WITNESS: Again, I don't</p> <p>23               think I read his testimony, or at least I</p> <p>24               can't recall it right now. The</p>
<p style="text-align: right;">Page 351</p> <p>1          Q.    Have you ever reviewed anything</p> <p>2          about the CIR and its processes before being</p> <p>3          contacted by plaintiffs' counsel in this case?</p> <p>4          A.    No. I find it very interesting,</p> <p>5          though.</p> <p>6          Q.    Have you ever been involved in a CIR</p> <p>7          review?</p> <p>8          A.    No.</p> <p>9          Q.    Have you ever studied a CIR review</p> <p>10         besides its review for talcum powder products?</p> <p>11         A.    In connection with this case and</p> <p>12         reviewing cosmetics law and regulation and</p> <p>13         self-regulatory processes, yes, I have read about</p> <p>14         other CIR processes. And that 1998 internal</p> <p>15         study -- FDA study that we've discussed, and that</p> <p>16         you made a copy of, has a fairly extensive</p> <p>17         discussion of both the advantages and the profound</p> <p>18         disadvantages and questions around CIR.</p> <p>19         Q.    Have you discussed with anyone at</p> <p>20         CIR how it reviews cosmetic ingredient petitions?</p> <p>21         A.    No.</p> <p>22         Q.    Do you know who Alan Anderson is?</p> <p>23         A.    No.</p> <p>24         Q.    Do you know -- you have his</p>	<p style="text-align: right;">Page 353</p> <p>1          particular information you're sharing is</p> <p>2          not specific.</p> <p>3       BY MR. HEGARTY:</p> <p>4          Q.    Do you recall -- so you didn't read</p> <p>5          his testimony that he said -- where he said that</p> <p>6          CIR does not favor industry?</p> <p>7               DR. THOMPSON: Object to form.</p> <p>8               THE WITNESS: No, but there</p> <p>9               is other evidence that CIR has both</p> <p>10              perceived and actual conflicts of</p> <p>11              interest.</p> <p>12       BY MR. HEGARTY:</p> <p>13         Q.    Are you aware that he prepared an</p> <p>14         expert report?</p> <p>15               DR. THOMPSON: Object to form.</p> <p>16               THE WITNESS: No, I'm not.</p> <p>17       BY MR. HEGARTY:</p> <p>18         Q.    Have you reviewed his expert report</p> <p>19         in this litigation?</p> <p>20               DR. THOMPSON: Object to form.</p> <p>21               THE WITNESS: No, but I'd be</p> <p>22               very happy to.</p> <p>23       BY MR. HEGARTY:</p> <p>24         Q.    Would that be something you'd be</p>

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1 interested in seeing?

2 A. Very much.

3 Q. Because you do comment on the CIR in

4 your report, correct?

5 A. Yes.

6 Q. Don't you think it would be

7 appropriate to read the testimony and the expert

8 report of the person who was overseeing the CIR

9 when it looked at talcum powder?

10 MS. PARFITT: Object to form.

11 DR. THOMPSON: Object to form.

12 THE WITNESS: I would be

13 delighted to look at any information your

14 client would like to offer that bears on

15 my opinions.

16 BY MR. HEGARTY:

17 Q. Have you asked plaintiffs' counsel

18 for any testimony from -- from individuals about

19 the CIR process?

20 DR. THOMPSON: Object to form.

21 THE WITNESS: I asked

22 plaintiffs' counsel for documentation

23 regarding the origins and early history

24 and general continuing activities of CIR.

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1 It didn't occur to me to ask

2 about current CIR operations testimony.

3 If I had known that was available, I

4 certainly would have asked for it.

5 BY MR. HEGARTY:

6 Q. If you look over at page 143 of your

7 -- I'm sorry -- paragraph 143 of your report.

8 A. Uh-huh.

9 Q. What is your authority for the

10 statement you make in that paragraph?

11 In other words, where did you get

12 that information from?

13 A. So there's a peer-review article on

14 Citizen Petition processes, which is cited in the

15 report, which -- which I read. I think that -- I

16 think the information either came directly out of

17 that or was -- or was my back-of-the-envelope

18 calculation from what I was seeing in that

19 article.

20 There's also either a -- either a

21 GAO or an Inspector General report on the

22 Citizen's Petition process that's about 20 years

23 old, but it sheds a lot of light on the delays

24 involved with the Citizen's Petition.

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1 I also did a little independent

2 investigation to see where Citizen's Petitions

3 were available online within the FDA, and they

4 were not available. I think they were available

5 in the device area. Though I can't exactly recall

6 now because I didn't take notes on that. But

7 there were none -- there was not data available

8 currently on the cosmetics side.

9 Q. Do you cite the authorities you just

10 provided in your answer in your expert report?

11 A. The peer-review article is -- is

12 cited right -- right here in the paragraph above

13 the one that you cited, which was this Chen et al.

14 petitioning the FDA.

15 The GAO or IG report is not cited in

16 the -- in the report but -- in my report, I don't

17 believe, but was made available to me after it was

18 submitted, and I think has been shared with and

19 disclosed to you.

20 Q. That's not referenced in your

21 report, is it?

22 A. That particular, the G -- I think --

23 we'll call it the GAO report for lack of having to

24 say both each time. It's not referenced in the

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1 report, but it confirmed what I had learned about

2 the Citizen's Petition process elsewhere.

3 Q. If you turn over to page -- to

4 paragraph 162 of your report.

5 A. Yes.

6 Q. There you refer to FDA Congressional

7 activity --

8 A. Yes.

9 Q. -- concerning the safety of cosmetic

10 products?

11 A. Yes.

12 Q. And there you detail -- in the

13 section detail hearings that the House

14 subcommittee had in 2019 regarding the safety of

15 cosmetic products?

16 A. Yes.

17 Q. Did you read the transcripts or

18 watch the video of those hearings?

19 A. I -- I read all the transcripts at

20 different levels of detail. There were a lot.

21 There were, I think, several days of testimony.

22 Some I was able to read more thoroughly than

23 others, but I reviewed all -- all the people

24 testifying in each day of hearings.

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1 Q. Are you aware that plaintiffs'  
 2 experts testified before that House subcommittee?  
 3 A. I think at the time I reviewed those  
 4 transcripts, I wasn't aware of who might have been  
 5 a plaintiffs' expert; but I think in reading some  
 6 of the transcripts, it became apparent that at  
 7 least a couple of them were.  
 8 Q. Do you know who Ann McTiernan is?  
 9 A. I read it at the time. I don't  
 10 recall now.  
 11 Q. Are you aware that plaintiffs'  
 12 lawyers paid her way to attend that subcommittee  
 13 hearing?  
 14 DR. THOMPSON: Object to form.  
 15 THE WITNESS: I am now aware  
 16 of that.  
 17 BY MR. HEGARTY:  
 18 Q. Are you aware that -- that she  
 19 checked with plaintiffs' lawyers before agreeing  
 20 to testify at that hearing?  
 21 DR. THOMPSON: Object to form.  
 22 MS. PARFITT: Object to form.  
 23 THE WITNESS: I did not know  
 24 that. Again, really all I know about the

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1 testimony is the testimony.  
 2 BY MR. HEGARTY:  
 3 Q. Is it your position that -- let me  
 4 look at that. Strike that.  
 5 A. Again --  
 6 Q. Would you consider Dr. McTiernan to  
 7 be an uninterested or disinterested scientist?  
 8 DR. THOMPSON: Object to form.  
 9 THE WITNESS: Thank you.  
 10 Thank you for using those words  
 11 correctly. I do appreciate it.  
 12 I don't have an opinion on  
 13 that. When I was reading the hearing  
 14 testimony -- as I'm sure you know,  
 15 Congressional hearings are planned and  
 16 orchestrated and, hopefully, useful and  
 17 testimony is expert and accurate.  
 18 Those hearings, as I recall,  
 19 were a combination of sort of expert  
 20 testimony and layperson testimony of the  
 21 sort of compelling anecdote variety that  
 22 is highly representative of Congressional  
 23 hearings.  
 24 So it would not have occurred

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1 to me, nor would it have mattered to my  
 2 interpretation of the testimony, to know  
 3 about people being disinterested in the  
 4 sense that in a properly convened  
 5 Congressional hearing everyone is  
 6 interested.  
 7 BY MR. HEGARTY:  
 8 Q. Is it your contention that  
 9 Congressional hearings are motivated by --  
 10 Congressional hearings like this are motivated  
 11 because of safety concerns in every instance?  
 12 DR. THOMPSON: Object to form.  
 13 THE WITNESS: Congressional  
 14 hearings are motivated by many things,  
 15 but safety concerns are one of the many  
 16 things that elected representatives  
 17 receive political benefits from  
 18 addressing.  
 19 BY MR. HEGARTY:  
 20 Q. They can also be motivated by  
 21 political concerns, correct?  
 22 A. I would resist the characterization  
 23 of political because it's, I think, in my view,  
 24 it's a much overused term that we really can't

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1 explain or even define these days.  
 2 So, again, I don't know if I want to  
 3 -- to try to lecture in this -- in this forum on  
 4 what I know about -- about designing Congressional  
 5 hearings.  
 6 But in general, the committee chair  
 7 or subcommittee chair that controls the chamber  
 8 controls the hearings and then takes, insofar as  
 9 that person takes input from within her own party  
 10 or across the aisle, different people come to  
 11 testify. Different committees, different  
 12 subcommittees have different levels of  
 13 bipartisanship, different levels of comity, and  
 14 different hearings as a result.  
 15 Q. Is it your testimony that there were  
 16 no political motivations behind the hearing you  
 17 reference in your report?  
 18 DR. THOMPSON: Object to form.  
 19 THE WITNESS: I don't know  
 20 what you mean by "political motivations."  
 21 BY MR. HEGARTY:  
 22 Q. Are you --  
 23 A. I'm not being naive. I really don't  
 24 know what you mean by "political motivations."



<p style="text-align: right;">Page 362</p> <p>1 Q. Really? You don't know what                  2 political motivations are?                  3 A. In this instance, a partisan                  4 motivation? A particular electoral outcome? I                  5 don't know. What might you mean?                  6 Q. Well, all of the above.                  7 Do you know whether any of those                  8 considerations went into the hearings?                  9 A. In these instances --                  10 DR. THOMPSON: Object to form.                  11 THE WITNESS: In these                  12 instances, I have to say, I'm very much                  13 struck by the fact that there has been                  14 this Feinstein -- Feinstein-Collins                  15 proposal for now I think close to more                  16 than five, perhaps closer to 10 years in                  17 some form.                  18 There is bipartisan support                  19 that, you know, the Trump's                  20 administration FDA was quite clear on the                  21 need for additional cosmetic regulation                  22 and, for that matter, it appears that                  23 Johnson &amp; Johnson is supportive.                  24 And I think my -- my struggle</p>	<p style="text-align: right;">Page 364</p> <p>1 Dr. Longo whose report you cited spoke at that                  2 hearing?                  3 A. I don't recall that, but I read the                  4 names of all of the participants as I read the                  5 hearing transcripts. So I presumably was aware of                  6 it at the time.                  7 Q. You made mention just a moment ago                  8 to legislation introduced by Senator Feinstein.                  9 And have you read the press releases                  10 she issued with regard to that legislation?                  11 A. I actually focused on reading the                  12 text of the bill.                  13 Q. And the text of the bill does not                  14 refer to talcum powder products, does it?                  15 A. The text of the bill does not. It's                  16 a -- it's a very interesting bill with a lot of                  17 provisions that I find attractive and with some                  18 provisions that I find rather cryptic that reflect                  19 the attempt to secure bipartisanship.                  20 Q. Did you read -- so you did not read                  21 with regard to her press release that                  22 organizations that support the Act include Johnson                  23 &amp; Johnson?                  24 A. Oh, I did read that part if that was</p>
<p style="text-align: right;">Page 363</p> <p>1 -- my struggle answering these particular                  2 questions is best captured by taking us                  3 back to the bolded language that precedes                  4 the paragraphs that we're discussing,                  5 which is just the "Cosmetics regulation                  6 may be on the verge of significant reform                  7 and improvement because of unprevented                  8 harm to consumers" and I say "whether or                  9 not manufacturers cooperate."                  10 It doesn't mean manufacturers                  11 won't cooperate. It just means that it                  12 appears to be a political moment where                  13 something might happen to finally improve                  14 cosmetics regulations and the funds that                  15 support it.                  16 BY MR. HEGARTY:                  17 Q. If you look at paragraph 165 of your                  18 report, you again refer to a hearing on March 12,                  19 2019, and then other hearings that followed in                  20 2019.                  21 Do you see that?                  22 A. Yes.                  23 Q. Are you aware that at those                  24 hearings, at least the December 2019 hearing, that</p>	<p style="text-align: right;">Page 365</p> <p>1 the press release. Yes, because I had mentioned                  2 that to you earlier that I had seen some mention                  3 that Johnson &amp; Johnson was supportive. I said                  4 that several hours ago.                  5 Q. Did you make reference to that                  6 support anywhere in your report?                  7 DR. THOMPSON: Object to form.                  8 THE WITNESS: I actually did                  9 not have the text of the most recent bill                  10 at the time that I submitted the report.                  11 It was something I wanted to make sure I                  12 was keeping track of as my expert service                  13 continues.                  14 BY MR. HEGARTY:                  15 Q. If you look at paragraph 171 of your                  16 report, please.                  17 A. Sure.                  18 Q. You make reference there to                  19 O'Shaughnessy and Wille deposition.                  20 Who is O'Shaughnessy?                  21 A. I have forgotten who O'Shaughnessy                  22 is. Wille was the deposition over a number of                  23 days that outlined Johnson &amp; Johnson's regulatory                  24 posture with respect to these products. It was a</p>

<p style="text-align: right;">Page 366</p> <p>1 difficult transcript to read.</p> <p>2 Q. What testimony from them are you</p> <p>3 relying on for purposes of any of your statements</p> <p>4 in this paragraph?</p> <p>5 DR. THOMPSON: Object to form.</p> <p>6 THE WITNESS: So I point out</p> <p>7 that this is a summary of opinions</p> <p>8 paragraph that also includes subsumed all</p> <p>9 of the prior -- the prior paragraphs</p> <p>10 and -- and their references.</p> <p>11 So, you know, in this case,</p> <p>12 this has -- this focuses primarily on</p> <p>13 your -- your client's apparent</p> <p>14 uninterest, extensively discussed in the</p> <p>15 Wille transcript, in supporting more</p> <p>16 detailed or definitive studies over the</p> <p>17 decades.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. What do you rely upon from</p> <p>20 Mr. O'Shaughnessy's transcripts for purposes of</p> <p>21 this paragraph?</p> <p>22 A. I can't recall.</p> <p>23 Q. Did you read the entirety of his</p> <p>24 deposition transcript?</p>	<p style="text-align: right;">Page 368</p> <p>1 that's a badly written sentence.</p> <p>2 So I -- I can't interpret</p> <p>3 exactly what the "respond to" words mean,</p> <p>4 but it -- it did not engage in the type</p> <p>5 of responsible corporate behavior in a</p> <p>6 voluntary system that I would like to see</p> <p>7 a company do when it has as much</p> <p>8 experience with event reporting and assay</p> <p>9 and ingredient reporting as Johnson &amp;</p> <p>10 Johnson does in its other lines of</p> <p>11 business.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. We've already established, I</p> <p>14 think -- and you tell me if I'm wrong -- that</p> <p>15 you've never published in the -- in the publicly</p> <p>16 available literature the standards for what it</p> <p>17 takes to be a responsible company as it relates to</p> <p>18 a cosmetic, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You've never lectured on what is</p> <p>21 responsible corporate behavior with regard to a</p> <p>22 cosmetic, correct?</p> <p>23 A. With regard to a cosmetic, correct.</p> <p>24 Q. You've never lectured or taught</p>
<p style="text-align: right;">Page 367</p> <p>1 A. I don't believe I read the entirety.</p> <p>2 I do believe I saw it.</p> <p>3 Q. Did you read the entirety of</p> <p>4 Ms. Wille's transcript?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware that both testified --</p> <p>7 Mr. O'Shaughnessy and Ms. Wille -- that -- Dr.</p> <p>8 Wille -- that there's never been asbestos in</p> <p>9 Johnson &amp; Johnson's talcum powder products?</p> <p>10 Do you recall that testimony?</p> <p>11 A. Again, it was a challenging</p> <p>12 transcript to distill to draw clear conclusions</p> <p>13 from, but I mainly recall Dr. Wille for all of</p> <p>14 these relying herself on other conclusions by</p> <p>15 other Johnson &amp; Johnson employees and</p> <p>16 representatives.</p> <p>17 There was very little, as I recall,</p> <p>18 in that very long transcript that -- that really</p> <p>19 was a matter of her personal knowledge.</p> <p>20 Q. If you look at paragraph 172 of your</p> <p>21 report, what did Johnson &amp; Johnson not respond to</p> <p>22 with regard to FDA?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: That's --</p>	<p style="text-align: right;">Page 369</p> <p>1 courses on the responsible corporate behavior of a</p> <p>2 manufacturer of a cosmetic, correct?</p> <p>3 A. A cosmetic, correct.</p> <p>4 Q. And prior to being contacted by</p> <p>5 plaintiffs' counsel in this case, you would not</p> <p>6 have called yourself an expert on what is the</p> <p>7 responsible corporate behavior of a manufacturer</p> <p>8 of a cosmetic, correct?</p> <p>9 DR. THOMPSON: Object to form.</p> <p>10 THE WITNESS: I don't -- I</p> <p>11 don't serve as an expert in litigation</p> <p>12 very often, as we've discussed. This is</p> <p>13 the first time in, roughly, a decade.</p> <p>14 I would consider myself an</p> <p>15 expert on responsible corporate behavior</p> <p>16 with respect to health and safety</p> <p>17 generally.</p> <p>18 BY MR. HEGARTY:</p> <p>19 Q. You have never before this case</p> <p>20 analyzed the -- what you consider to be the</p> <p>21 corporate behavior of a manufacturer of a cosmetic</p> <p>22 product, correct?</p> <p>23 DR. THOMPSON: Object to form.</p> <p>24 THE WITNESS: Correct.</p>

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1 BY MR. HEGARTY:  
 2 Q. And never analyzed before being  
 3 hired in this case with regard to what is a  
 4 responsible -- what is responsible corporate  
 5 behavior compliance with the cosmetic regulations,  
 6 correct?  
 7 DR. THOMPSON: Object to form.  
 8 THE WITNESS: I've never  
 9 analyzed -- I've never compared a  
 10 corporation's conduct to the requirements  
 11 of the cosmetic regulations before  
 12 becoming involved in this matter.  
 13 BY MR. HEGARTY:  
 14 Q. If we look at paragraph 175, you say  
 15 "Johnson & Johnson did not register its cosmetics  
 16 accurately."  
 17 Where did Johnson & Johnson not  
 18 register its cosmetics?  
 19 A. The registration requirements are  
 20 voluntary under the existing scheme and, you know,  
 21 its registration of facilities, but then its  
 22 products and ingredients that are associated with  
 23 each facility.  
 24 Something that's very interesting is

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1 under the proposed legislation, the  
 2 Feinstein-Collins bill, not only would  
 3 registration be mandatory, but it would be an  
 4 explicit certification in the process of  
 5 registering a facility for safety of every product  
 6 and ingredient has been substantiated or that that  
 7 warning we've long described discussed has been  
 8 given. So there's a clear understanding that  
 9 there's a relationship between registering one's  
 10 facilities and substantiating the safety of one's  
 11 products and ingredients.  
 12 This, again, these are -- these are  
 13 conclusions that summarize and distill a lot of  
 14 the prior contents of -- of my report, and the  
 15 notion of registering its cosmetics accurately is,  
 16 in my expert opinion, as we discussed very close  
 17 to the beginning of today, the ingredients listed  
 18 are not the full contents of these products.  
 19 MR. HEGARTY: Let's take a  
 20 break. Let's go off the record.  
 21 (Recess: 4:01 p.m. -  
 22 4:28 p.m.)  
 23 MR. HEGARTY: All right.  
 24 We're back on the record, Dr. Sage.

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1 BY MR. HEGARTY:  
 2 Q. I'll be jumping around a little bit  
 3 because I went back over. Probably just hit  
 4 things here or there that may not be a  
 5 concentrated set of questions about any subject  
 6 area.  
 7 A. Okay.  
 8 MR. HEGARTY: We talked  
 9 earlier about whether you had contact  
 10 with any and communicated with any of the  
 11 expert of plaintiffs in this case, and  
 12 I'm going to mark as Exhibit 19 a list of  
 13 the plaintiffs' experts that have been  
 14 disclosed in these cases.  
 15 (Document marked for  
 16 identification as Sage Exhibit 19.)  
 17 BY MR. HEGARTY:  
 18 Q. Would you look at that list and tell  
 19 me whether you know any of those names. I should  
 20 say, know any of them personally.  
 21 A. (Reviews document.)  
 22 I don't know any of them personally.  
 23 Q. Okay. In talking about your  
 24 methodology for your review of material, what was

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1 your method yourself for ensuring that you had the  
 2 pertinent information that you needed to come to  
 3 conclusions or opinions in this litigation?  
 4 In other words, what method did you  
 5 apply to -- to ensure that you had the information  
 6 you needed to provide opinions in your report?  
 7 A. Yeah. I applied the same method I  
 8 would be applying if I were writing an article.  
 9 The same method I would be applying if I were  
 10 planning a series of classes on a topic.  
 11 Identify the questions in a  
 12 regulatory context. Go to the regulatory sources.  
 13 Look at commentary that might be out there.  
 14 Things that are very relevant to me are historical  
 15 context, political context, economic context,  
 16 industrial context.  
 17 Here there was a heavy overlay of --  
 18 of scientific research and epidemiology. So I had  
 19 to sort of identify each of those areas and  
 20 satisfy myself that I had asked the questions and  
 21 found the material that would -- that would  
 22 provide the information I needed.  
 23 Q. Have you ever published that  
 24 methodology in any article or any document?

<p style="text-align: right;">Page 374</p> <p>1 DR. THOMPSON: Object to form.</p> <p>2 THE WITNESS: I have not</p> <p>3 published it. One could infer it from a</p> <p>4 lot of my work. I have a -- particularly</p> <p>5 in my longer work, I have a voice and a</p> <p>6 style that is fairly recognizable among</p> <p>7 my peer group.</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Can you cite for me anyone who has</p> <p>10 come to the same opinions as you set out in your</p> <p>11 expert report?</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: I can't cite</p> <p>14 anyone who's come to those opinions in</p> <p>15 this matter.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. And when I'm talking about anyone,</p> <p>18 I'm talking about in the litigation or outside the</p> <p>19 litigation.</p> <p>20 Can you cite for me anyone that</p> <p>21 you're aware of who's come to the same opinions</p> <p>22 that you have that you set out in your expert</p> <p>23 report?</p> <p>24 DR. THOMPSON: Object to form.</p>	<p style="text-align: right;">Page 376</p> <p>1 the FDA letter.</p> <p>2 A. I believe it's right here. I can</p> <p>3 grab it from the one you gave me.</p> <p>4 Q. If you look at the first page of</p> <p>5 that exhibit, Exhibit No. 7, you see the third</p> <p>6 line it refers to: "Year 1994 petition requested</p> <p>7 all cosmetic talc bear labels with a warning such</p> <p>8 as" and then lists the warning, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Then if you look a few lines down,</p> <p>11 it says: "Additionally, year 2008 petition</p> <p>12 requested that cosmetic talcum powder products</p> <p>13 bear labels with a prominent warning such as" and</p> <p>14 then it lists another suggested warning, correct?</p> <p>15 A. Yes.</p> <p>16 Q. So is it your contention that even</p> <p>17 with that "such as" language that FDA would only</p> <p>18 or only based its conclusions with regard to this</p> <p>19 letter as to the two samples of warnings in that</p> <p>20 first paragraph?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: I think the</p> <p>23 "such as" is the writer of this letter's</p> <p>24 not fully clear way of expressing in all</p>
<p style="text-align: right;">Page 375</p> <p>1 THE WITNESS: I can't cite</p> <p>2 anyone who has come to the opinions I</p> <p>3 have regarding this situation and these</p> <p>4 obligations.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. By citing it in your report, you</p> <p>7 certainly agree that FDA's April 2014 letter is</p> <p>8 relevant to the issues that you analyzed in this</p> <p>9 case, correct?</p> <p>10 MS. PARFITT: Objection.</p> <p>11 Form.</p> <p>12 THE WITNESS: It is relevant.</p> <p>13 It is not directly relevant to</p> <p>14 manufacturer's obligations to warn nor is</p> <p>15 it directly relevant to manufacturer's</p> <p>16 obligations to disclose a</p> <p>17 nonsubstantiation of safety.</p> <p>18 It is certainly relevant to</p> <p>19 the relationship between the FDA and the</p> <p>20 other parties who might be involved in</p> <p>21 approving the safety of cosmetics.</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Do you have that exhibit? It's</p> <p>24 Exhibit No. 7, or you can look in your notebook to</p>	<p style="text-align: right;">Page 377</p> <p>1 material respects "equivalent to." So</p> <p>2 that a word or two might vary, but the</p> <p>3 thrust of it was identical.</p> <p>4 I don't think that this</p> <p>5 paragraph implies that the FDA is</p> <p>6 declining a request to pursue a warning</p> <p>7 of any kind. I think this is quite</p> <p>8 specific to these -- to the requested</p> <p>9 language, and that is my understanding of</p> <p>10 the Citizen's Petition process.</p> <p>11 BY MR. HEGARTY:</p> <p>12 Q. That was what I was going to ask</p> <p>13 you.</p> <p>14 What do you base that opinion on</p> <p>15 that in particular that FDA was not saying in this</p> <p>16 letter that it's not -- that it doesn't believe</p> <p>17 any type of warning would be appropriate?</p> <p>18 A. Because the position process, which,</p> <p>19 as we've discussed, has delays, gaps, and flaws</p> <p>20 that are well-recognized and that are immediately</p> <p>21 evident in the letter that says "Your petitions</p> <p>22 dated 1994 and 2008 are being addressed in 2014."</p> <p>23 That already tells you something, you know, about</p> <p>24 the Citizen's Petition process is, to put it</p>

<p style="text-align: right;">Page 378</p> <p>1 politely, suboptimal.</p> <p>2 The Citizen's Petition process is</p> <p>3 designed to make specific requests of FDA. It's</p> <p>4 not a generic request to do something about a</p> <p>5 potential problem, and so the response to the</p> <p>6 Citizen's Petition is exactly that. It is either</p> <p>7 agreeing or declining to do the action that's</p> <p>8 requested.</p> <p>9 Q. Your authority for that is what?</p> <p>10 A. What I understand from the text of</p> <p>11 the regulations, what I've seen in Citizen's</p> <p>12 Petitions, and what I've read about the Citizen's</p> <p>13 Petitions process including that, again, we're</p> <p>14 just calling it the GAO report.</p> <p>15 Q. And prior to being hired to serve as</p> <p>16 an expert witness in this case, you had never seen</p> <p>17 any company documents of Johnson &amp; Johnson,</p> <p>18 correct?</p> <p>19 A. I certainly had seen no proprietary</p> <p>20 company documents of Johnson &amp; Johnson. I'm sure</p> <p>21 I had seen various documents of Johnson &amp; Johnson</p> <p>22 in, say, the drug and device domain in passing.</p> <p>23 Q. Do you know who Imerys is?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 380</p> <p>1 Q. Had you ever reviewed any</p> <p>2 documents -- internal documents prior to being</p> <p>3 contacted to serve as an expert witness in this</p> <p>4 case from PCPC or CTFA?</p> <p>5 A. No.</p> <p>6 Q. Had you ever heard of PCPC or CTFA</p> <p>7 prior to being contacted by plaintiffs' counsel in</p> <p>8 this case?</p> <p>9 A. In passing, probably, but I haven't</p> <p>10 made a mental note of it. Trade groups,</p> <p>11 particularly trade groups involving health-related</p> <p>12 consumer products, would be within what I would</p> <p>13 read.</p> <p>14 Q. Is there such a mineral as</p> <p>15 asbestos-free talc --</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. -- in your opinion?</p> <p>19 DR. THOMPSON: Object to form.</p> <p>20 THE WITNESS: I don't have a</p> <p>21 scientific basis for giving an opinion on</p> <p>22 that. I have seen nothing in this matter</p> <p>23 to persuade me that -- that the majority</p> <p>24 or anything approximating all of talc</p>
<p style="text-align: right;">Page 379</p> <p>1 Q. Have you seen any documents by</p> <p>2 Imerys prior to being hired to serve as an expert</p> <p>3 in this case?</p> <p>4 A. No.</p> <p>5 Q. Had you done any work prior to being</p> <p>6 hired in this case for any type of mining company?</p> <p>7 A. No.</p> <p>8 Q. Do you have any expertise with</p> <p>9 regard to the obligations of a mining company as</p> <p>10 it relates to talcum powder products?</p> <p>11 A. With respect to --</p> <p>12 DR. THOMPSON: Object to form.</p> <p>13 THE WITNESS: -- talcum powder</p> <p>14 products, no. In my legal practice days,</p> <p>15 I wrote the brief in Supreme Court</p> <p>16 litigation involving OSHA obligations,</p> <p>17 which also touched on mine safety</p> <p>18 obligations, and so I have some passing</p> <p>19 acquaintance with mining safety.</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. Prior to being contacted to serve as</p> <p>22 an expert witness in this case, had you had any</p> <p>23 dealings with PCPC, also known as CTFA?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 381</p> <p>1 products are truly asbestos-free.</p> <p>2 BY MR. HEGARTY:</p> <p>3 Q. Do you have an opinion one way or</p> <p>4 the other whether you can mine talc that's</p> <p>5 asbestos-free?</p> <p>6 A. I have no --</p> <p>7 DR. THOMPSON: Object to form.</p> <p>8 THE WITNESS: I have no</p> <p>9 opinion on that. I have seen assertions</p> <p>10 of that and I have seen contrary</p> <p>11 positions.</p> <p>12 BY MR. HEGARTY:</p> <p>13 Q. Do you have an opinion as to the</p> <p>14 amount of exposure -- the minimum amount of</p> <p>15 exposure to asbestos that can cause ovarian</p> <p>16 cancer?</p> <p>17 A. I have relied, as we've discussed,</p> <p>18 on positions and determinations by others that</p> <p>19 there is no safe level of asbestos exposure, and</p> <p>20 insofar as there are paths by which asbestos can</p> <p>21 reach the ovaries, I would apply that same zero</p> <p>22 threshold to ovarian cancer.</p> <p>23 Q. So is it your opinion that a single</p> <p>24 fiber of asbestos is capable of causing ovarian</p>



<p style="text-align: right;">Page 382</p> <p>1 cancer?</p> <p>2 A. I have no reason to think otherwise.</p> <p>3 Q. And with regard to the medical</p> <p>4 literature as it relates to migration of talc or</p> <p>5 asbestos fibers from perineal use of -- of talcum</p> <p>6 powder products, have you done an analysis</p> <p>7 yourself of that medical literature?</p> <p>8 A. I have read some of that literature,</p> <p>9 and my -- my medical view, which is not the expert</p> <p>10 view that I'm, you know, here presenting in terms</p> <p>11 of regulatory design and regulatory obligation, my</p> <p>12 medical -- my medical view is that there are</p> <p>13 demonstrated pathways by which perineal use of</p> <p>14 talc can reach the ovary.</p> <p>15 Q. And that's based on the medical</p> <p>16 literature you reference in your expert report,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware of any studies</p> <p>20 that have showed that external application or</p> <p>21 perineal application of any powder or any particle</p> <p>22 has migrated to the tubes and ovaries, in other</p> <p>23 words, where it's been tracked from external</p> <p>24 application to the tubes and ovaries?</p>	<p style="text-align: right;">Page 384</p> <p>1 THE WITNESS: I would have --</p> <p>2 I would have to go and reread the</p> <p>3 criteria for the classification, but I'll</p> <p>4 accept that characterization.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. Let me go ahead and show you the</p> <p>7 Volume 93 Monograph 2010, and I've only got two</p> <p>8 copies. I'm sorry.</p> <p>9 A. Oh, I have one if it's easier. Do</p> <p>10 you want --</p> <p>11 MR. HEGARTY: You can give</p> <p>12 that to Margaret.</p> <p>13 DR. THOMPSON: I have it.</p> <p>14 MR. HEGARTY: We'll leave it</p> <p>15 there so I don't have to take it back.</p> <p>16 You still have to mark it as an exhibit.</p> <p>17 THE WITNESS: There you go.</p> <p>18 (Document marked for</p> <p>19 identification as Sage Exhibit 20.)</p> <p>20 BY MR. HEGARTY:</p> <p>21 Q. And have you reviewed that</p> <p>22 monograph?</p> <p>23 A. Yes.</p> <p>24 Q. And if you look at page 31 of that</p>
<p style="text-align: right;">Page 383</p> <p>1 A. I would have to go back and review</p> <p>2 the studies to see if anything -- if any studies I</p> <p>3 reviewed were designed to illustrate that exactly.</p> <p>4 Q. And you have not done any -- any of</p> <p>5 your own analysis as to whether any bottle of</p> <p>6 Johnson's Baby Powder or Shower to Shower actually</p> <p>7 has -- has ever had asbestos in it, correct?</p> <p>8 A. My own analysis? No.</p> <p>9 Q. Going back to your expert report and</p> <p>10 we'll go back over a few paragraphs.</p> <p>11 A. Sure.</p> <p>12 Q. In paragraph 27, you make reference</p> <p>13 to IARC's monograph with regard to -- IARC's</p> <p>14 monograph in 2010 where it classified the perineal</p> <p>15 use of talc-based body powder (non-asbestiform) as</p> <p>16 Group 2B.</p> <p>17 Do you see that reference?</p> <p>18 A. In paragraph 28?</p> <p>19 Q. 28. I'm sorry. Yes, 28.</p> <p>20 The 2B finding means that chance,</p> <p>21 bias, and confounding cannot be ruled out with</p> <p>22 reasonable certainty, correct?</p> <p>23 MS. PARFITT: Objection to</p> <p>24 form.</p>	<p style="text-align: right;">Page 385</p> <p>1 monograph, at the very bottom, is it your</p> <p>2 understanding that with regard to a 2B finding,</p> <p>3 that's a finding of limited notice of</p> <p>4 carcinogenicity?</p> <p>5 A. I'm sorry. I'm looking for the</p> <p>6 correlation between the description and the -- and</p> <p>7 the classification of the category.</p> <p>8 Q. Well, do you understand one way or</p> <p>9 another?</p> <p>10 A. But I'm -- but if -- so, yes. "A</p> <p>11 positive association has been observed, but</p> <p>12 chance, bias, or confounding could not be ruled</p> <p>13 out." Absolutely.</p> <p>14 And I would -- and I would, again,</p> <p>15 point out that -- that a 2B finding alone -- and</p> <p>16 this is, you know, for platy talc -- would be</p> <p>17 exactly the sort of information that's</p> <p>18 contemplated by the regulation to support a</p> <p>19 revisiting of substantiation and trigger a "safety</p> <p>20 not determined" notice.</p> <p>21 And I should have -- in what you</p> <p>22 pointed me to -- I'm sorry and I hope that's not a</p> <p>23 problem.</p> <p>24 Q. No, go ahead.</p>

<p style="text-align: right;">Page 386</p> <p>1 A. "A positive association has been                  2 observed for which a causal interpretation is                  3 considered by the working group to be credible,"                  4 and then it goes with the limitation language that                  5 you quoted.                  6 Q. Is it your opinion that a single                  7 epidemiologic study finding association between a                  8 cosmetic and an illness is enough to consider that                  9 cosmetic not proved safe?                  10 DR. THOMPSON: Object to form.                  11 THE WITNESS: It would depend                  12 on the study, but conceptually, yes.                  13 BY MR. HEGARTY:                  14 Q. Can you cite for me any published                  15 standard for assessing the safety of a cosmetic?                  16 DR. THOMPSON: Object to form.                  17 THE WITNESS: I have seen CIR                  18 material about their various                  19 classifications. I have also seen Health                  20 Canada report. I've also seen references                  21 to other types of safety standards in                  22 many of the materials that we've                  23 discussed today.                  24 BY MR. HEGARTY:</p>	<p style="text-align: right;">Page 388</p> <p>1 referenced in that article?                  2 A. I can't -- I can't recall. Probably                  3 not.                  4 Q. Do you know whether certain forms of                  5 asbestos come in asbestos and non-asbestos forms?                  6 A. I --                  7 DR. THOMPSON: Object to form.                  8 THE WITNESS: I know that to                  9 be the case in some of the material that                  10 I have reviewed in terms of how the                  11 fibers and crystals are structured.                  12 BY MR. HEGARTY:                  13 Q. If you look at paragraph 50 of your                  14 report, your footnote 15, you include footnote 15.                  15 You make a statement, though, in that paragraph                  16 that said:                  17 "Asbestos was known to cause lung                  18 cancer since the 1930s and was suspected to cause                  19 ovarian cancer since the 1960s."                  20 And my question is: What do you                  21 cite as your authority for saying that asbestos                  22 was suspected to cause ovarian cancer since the                  23 1960s?                  24 And, again, you refer only there to</p>
<p style="text-align: right;">Page 387</p> <p>1 Q. Okay. Other than the CIR and Health                  2 Canada, can you cite for me any published                  3 standards on assessing the safety of a cosmetic?                  4 A. No.                  5 Q. If you look over at paragraph 47 of                  6 your report --                  7 A. Yes.                  8 Q. -- you cite in footnote 10 a number                  9 of studies.                  10 Do you know whether any of those                  11 studies tested Johnson's Baby Powder?                  12 A. I would have to go back and look. I                  13 do not know.                  14 Oh, wait a second. In the -- in the                  15 "Blunt" or Blount reference here, the quote is                  16 then enhanced with confirmed that the tested --                  17 the tested sample was, in fact, Johnson's Baby                  18 Powder.                  19 Q. As to Dr. Blount, did you read her                  20 deposition in this litigation?                  21 A. I -- I believe I received it.                  22 Again, it's not one that I read in -- in full.                  23 Q. Did you read what she had to say                  24 about the particular sample that she tested as</p>	<p style="text-align: right;">Page 389</p> <p>1 footnote 15, which is the 30(b)(6) deposition and                  2 exhibits of John Hopkins and Exhibit 28.                  3 A. So I'm right now looking at the                  4 appendix in my report that was the summary of                  5 scientific evidence to see if one of those pieces                  6 specifically supports that statement.                  7 (Reviews document.)                  8 None of these of the published                  9 articles date to the 1960s, but the Henderson 1971                  10 article talks about the possibility of an                  11 association of talc and asbestos and the                  12 possibility of relationship between those and                  13 carcinoma changes in the ovary.                  14 I think that is sufficient support                  15 for concerns going back to the 1960s if it's a                  16 1971 publication.                  17 Q. You have reviewed the epidemiologic                  18 literature -- some of the epidemiologic literature                  19 looking at talcum powder use and ovarian cancer,                  20 correct?                  21 A. Correct.                  22 Q. That literature shows -- or strike                  23 that.                  24 Some of that literature reports the</p>

<p style="text-align: right;">Page 390</p> <p>1 relative risk in the range of 1.2 to 1.3; is that                  2 right?                  3 A. Yes.                  4 Q. And such a relative risk in that                  5 range is a weak relative risk, correct?                  6 DR. THOMPSON: Object to form.                  7 THE WITNESS: No. No. It                  8 indicates for a serious disease that with                  9 confidence intervals that fall between                  10 1.2 and 1.3, a serious disease with a                  11 substantial prevalence, even if not                  12 incredibly common across the population,                  13 that's a serious risk.                  14 BY MR. HEGARTY:                  15 Q. Well, that's not exactly what you                  16 said before, and I'll show you the context.                  17 I marked as Exhibit No. 21 an                  18 article of yours entitled "Lessons From Breast                  19 Implant Litigation."                  20 (Document marked for                  21 identification as Sage Exhibit 21.)                  22 BY MR. HEGARTY:                  23 Q. Do you recall this article?                  24 A. That's a book review.</p>	<p style="text-align: right;">Page 392</p> <p>1 A. Well, just reading this paragraph, I                  2 published this book review one year into my                  3 teaching career in 1996 based on someone else's                  4 book about breast implant litigation.                  5 I could quote other parts from this                  6 book review that I actually remember, which was                  7 that the author of this book expected to think                  8 that the plaintiffs' lawyers were the villains in                  9 this situation and actually found her villains                  10 elsewhere.                  11 But in terms of these particular                  12 statistics, all I can say is, as I reported them                  13 in the book review, I talked about wide confidence                  14 intervals. And I talked about one study where I                  15 talk about the upper bound of the confidence                  16 interval, but don't give the lower bound.                  17 So perhaps I said that then.                  18 Perhaps I would still agree. Perhaps I wouldn't.                  19 Q. Aren't you saying there, though,                  20 that your take is that with regard to the study                  21 described there that the link to the disease is                  22 possible, but unlikely, and at any rate cannot be                  23 substantial?                  24 DR. THOMPSON: Object to form.</p>
<p style="text-align: right;">Page 391</p> <p>1 Q. Book review. Okay.                  2 If you look over at the second page                  3 of that document, that book review, the paragraph                  4 on the left-hand side where we say "What do we                  5 know in 1996?" Do you see that paragraph?                  6 A. Yes.                  7 Q. You note in that paragraph towards                  8 the bottom that:                  9 "The most recent and largest study                  10 calculated a relative of risk of 1.24 for                  11 self-reported disease and established with 95                  12 percent confidence an upper bound of 1.41. In                  13 other words, a causal effect between breast                  14 implants and connective tissue disease is                  15 possible, but unlikely, and at any rate cannot be                  16 substantial."                  17 Correct?                  18 A. That's what I say here, interpreting                  19 the information in Angell's book at the time.                  20 Q. And you're saying there that a study                  21 that reports a relative risk of 1.24, while it                  22 indicates a disease is possible, you're saying                  23 it's unlikely, at any rate cannot be substantial,                  24 correct?</p>	<p style="text-align: right;">Page 393</p> <p>1 THE WITNESS: Possible --                  2 well, again, it's a -- it's a (laugh)                  3 book review of someone else's book where                  4 my points in the book review are not                  5 predominantly epidemiologic.                  6 But I say what I say, and in                  7 this instance, we know that at least two                  8 studies that are -- that I refer to in                  9 this paragraph have wide confidence                  10 intervals and the third is whatever I say                  11 it is.                  12 And I draw some inference,                  13 which, as I just said, if I were to go                  14 back and revisit the data and revisit                  15 these studies, I might or might not write                  16 it the same way today.                  17 BY MR. HEGARTY:                  18 Q. But the words that I read to you are                  19 your words. It's not quoted from the book you                  20 reviewed, right?                  21 A. Correct.                  22 Q. This is your take on the book that                  23 you reviewed, right?                  24 A. It is a small piece of a book review</p>

<p style="text-align: right;">Page 394</p> <p>1 essay that is mainly about other topics.</p> <p>2 MR. HEGARTY: You mentioned or</p> <p>3 we talked earlier in the deposition about</p> <p>4 the O'Brien study. I'll mark that study</p> <p>5 as Exhibit No. 22.</p> <p>6 (Document marked for</p> <p>7 identification as Sage Exhibit 22.)</p> <p>8 BY MR. HEGARTY:</p> <p>9 Q. Do you in your report anywhere</p> <p>10 reference this study?</p> <p>11 A. I don't reference it directly. It's</p> <p>12 an analysis of pooled data. I spent a fair amount</p> <p>13 of time reading this when I was evaluating the</p> <p>14 science and -- and the case.</p> <p>15 Q. You don't even cite this article in</p> <p>16 your reference materials, though, do you?</p> <p>17 A. I'd have to look. If I don't, I</p> <p>18 don't.</p> <p>19 Q. Do you want to look?</p> <p>20 A. I did -- well.</p> <p>21 (Reviews document.)</p> <p>22 Apparently, I don't.</p> <p>23 Q. You do cite --</p> <p>24 A. I should have. My apologies.</p>	<p style="text-align: right;">Page 396</p> <p>1 stated.</p> <p>2 I just come back to the point we've</p> <p>3 discussed at several junctures, though we're now</p> <p>4 sort of doing skip-around questioning, which is,</p> <p>5 I'm not offering a scientific expert opinion on</p> <p>6 causation.</p> <p>7 Q. Did you do any sort of analysis</p> <p>8 weighing the strengths and weaknesses of the</p> <p>9 O'Brien study?</p> <p>10 DR. THOMPSON: Object. Form.</p> <p>11 THE WITNESS: I read the</p> <p>12 study. I mean, again, it's -- it's a</p> <p>13 pooled sample study to go back, you know,</p> <p>14 and it's based on cohort studies that</p> <p>15 have their own characteristics and have</p> <p>16 their own weaknesses.</p> <p>17 It is a peer-reviewed article.</p> <p>18 It was worth my attention, and it should</p> <p>19 have been noticed to you as among the</p> <p>20 material I considered.</p> <p>21 Beyond that, you'd have to ask</p> <p>22 other questions.</p> <p>23 BY MR. HEGARTY:</p> <p>24 Q. If you look at paragraph 71 of your</p>
<p style="text-align: right;">Page 395</p> <p>1 Q. I was going to say: You cite a</p> <p>2 number of other epidemiologic studies in your list</p> <p>3 of materials, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Certainly an article from 2020 from</p> <p>6 JAMA is an article that should be referenced as</p> <p>7 you would reference other articles of an</p> <p>8 epidemiologic nature that you included in your</p> <p>9 materials, correct?</p> <p>10 DR. THOMPSON: Object to form.</p> <p>11 THE WITNESS: I -- I agree</p> <p>12 this is an article that would be worth</p> <p>13 referencing as material considered.</p> <p>14 BY MR. HEGARTY:</p> <p>15 Q. And why did you not reference it?</p> <p>16 DR. THOMPSON: Object to form.</p> <p>17 THE WITNESS: I can't answer</p> <p>18 that. Might be an oversight. Might just</p> <p>19 be -- I don't have an answer for that. I</p> <p>20 do -- I do -- I do recall reading --</p> <p>21 reading this but --</p> <p>22 BY MR. HEGARTY:</p> <p>23 Q. Do you -- I'm sorry.</p> <p>24 A. -- but the conclusions are as</p>	<p style="text-align: right;">Page 397</p> <p>1 report, you make the statement in that paragraph</p> <p>2 that "studies of cosmetics are infrequent and</p> <p>3 poorly funded compared to drugs."</p> <p>4 What's your authority for that</p> <p>5 statement?</p> <p>6 A. It's consistent with everything I've</p> <p>7 read in reviews of cosmetic regulation and,</p> <p>8 frankly, it's derivative of extensive expertise</p> <p>9 with the drug regulatory regime, which requires</p> <p>10 studies and the cost of which are constant matters</p> <p>11 of public comment.</p> <p>12 Q. Do you have an opinion as to -- wait</p> <p>13 a minute. Strike that.</p> <p>14 Is it your opinion that Johnson's</p> <p>15 Baby Powder in 2019 should have carried a warning</p> <p>16 about the risk of ovarian cancer?</p> <p>17 MS. PARFITT: Objection.</p> <p>18 DR. THOMPSON: Object to form.</p> <p>19 THE WITNESS: It is my</p> <p>20 opinion that in 2019 and many years</p> <p>21 before that Johnson &amp; Johnson had a legal</p> <p>22 obligation to disclose that safety had</p> <p>23 not been determined.</p> <p>24 It is my opinion that with</p>

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<p>1 respect to warnings, instructions, or</p> <p>2 other mitigation options, such as</p> <p>3 reformulation or withdrawal, Johnson &amp;</p> <p>4 Johnson had to do something.</p> <p>5 BY MR. HEGARTY:</p> <p>6 Q. And do you have an opinion as to</p> <p>7 what information should have been included on the</p> <p>8 package for consumers as it relates to the</p> <p>9 analysis that you have done in this case?</p> <p>10 In other words, do you have specific</p> <p>11 language that you believe should have been</p> <p>12 included on Johnson &amp; Johnson's packaging for its</p> <p>13 Johnson's Baby Powder and Shower to Shower</p> <p>14 products?</p> <p>15 MS. PARFITT: Object to form.</p> <p>16 THE WITNESS: I believe the</p> <p>17 740.10 language should have been</p> <p>18 included. I think that was a direct</p> <p>19 regulatory obligation.</p> <p>20 I think other language should</p> <p>21 have been offered by Johnson &amp; Johnson to</p> <p>22 better inform consumers about -- about</p> <p>23 possibilities of harm, in other words,</p> <p>24 about risk, about ways to mitigate that</p>	<p>1 things that Johnson &amp; Johnson could have and --</p> <p>2 could have done, and I would have applauded any of</p> <p>3 them.</p> <p>4 I think it's worth pointing out that</p> <p>5 seriously studying the problem in ways that they</p> <p>6 did not study the problem would have been a good</p> <p>7 start, but as for the rest of the mitigation</p> <p>8 measures ranging from disclosure to warning to</p> <p>9 instruction to reformulation to withdrawal, that</p> <p>10 was up to your client.</p> <p>11 Q. What are you relying on for saying</p> <p>12 that Johnson &amp; Johnson did not seriously study its</p> <p>13 talcum powder products?</p> <p>14 A. A lot of this came out of the Wille</p> <p>15 testimony, but a lot of it also came out of the</p> <p>16 history of the different studies, and the fact</p> <p>17 that beyond those early studies of surgical</p> <p>18 gloves, I was not made aware of any serious</p> <p>19 research contributions that Johnson &amp; Johnson had</p> <p>20 made.</p> <p>21 Q. When you say you were not made aware</p> <p>22 of, that's -- you're referring to materials that</p> <p>23 you have reviewed, correct?</p> <p>24 A. Yes.</p>
Page 399	Page 401
<p>1 risk in terms of Instructions for Use or</p> <p>2 nonuse.</p> <p>3 But I wasn't asked to create</p> <p>4 language for your client, and I think the</p> <p>5 major lesson is that many things that</p> <p>6 your client could have done would satisfy</p> <p>7 me, but doing nothing does not satisfy</p> <p>8 me.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. I was going to ask. My next</p> <p>11 question is: Do you have an opinion as to what</p> <p>12 specific language should have been included on</p> <p>13 Johnson's Baby Powder and Shower to Shower during</p> <p>14 the time it was being sold in the United States</p> <p>15 and Canada?</p> <p>16 MS. PARFITT: Objection.</p> <p>17 DR. THOMPSON: Object to form.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MR. HEGARTY:</p> <p>20 Q. And do you have an opinion as to</p> <p>21 what specific mitigation activities Johnson &amp;</p> <p>22 Johnson should have initiated with regard to its</p> <p>23 talcum powder products?</p> <p>24 A. Again, there are a wide range of</p>	<p>1 Q. If you look at paragraph 80 of your</p> <p>2 report -- I'm sorry. Let's not -- let's not go</p> <p>3 there yet. I think I skipped over a couple</p> <p>4 points.</p> <p>5 My methodology is to take the tabs</p> <p>6 off the bottom of my notes.</p> <p>7 (Laugh).</p> <p>8 MR. TISI: Where was it</p> <p>9 published?</p> <p>10 MR. HEGARTY: It's not been</p> <p>11 published.</p> <p>12 MR. TISI: Well, then strike</p> <p>13 you.</p> <p>14 MR. HEGARTY: It's not</p> <p>15 reliable.</p> <p>16 THE WITNESS: My methodology</p> <p>17 is, I need a little more Diet Coke.</p> <p>18 MR. HEGARTY: I realize at</p> <p>19 times when I finish a deposition and I</p> <p>20 figure out that I did miss things to ask.</p> <p>21 BY MR. HEGARTY:</p> <p>22 Q. So if you look at paragraph 70 of</p> <p>23 your expert report.</p> <p>24 A. Yes.</p>



<p style="text-align: right;">Page 402</p> <p>1 Q. I think we've established that you              2 have not read all of the expert reports provided              3 by the Johnson &amp; Johnson defendants in this              4 litigation?              5 A. Yes.              6 Q. And particularly you have not read              7 the reports of Johnson &amp; Johnson experts where              8 they say that talcum powder use is safe, correct?              9 MS. PARFITT: Objection to              10 form.              11 THE WITNESS: I have read              12 some testimony regarding their assertions              13 that talcum powder is safe. I have seen              14 perhaps an expert report, but nothing              15 immediately springs to mind.              16 It has been the company's              17 consistent position essentially since              18 time immemorial, which is to me a big              19 part of the problem here.              20 BY MR. HEGARTY:              21 Q. And with regard to Johnson &amp;              22 Johnson's experts who have -- who testified and              23 prepared reports saying that talcum powder is              24 safe, is it your contention that they are not</p>	<p style="text-align: right;">Page 404</p> <p>1 A. I do.              2 Q. And are you in that paragraph              3 referencing the long latency between talcum powder              4 use and the development of ovarian cancer, or              5 something else?              6 A. Essentially -- essentially that, but              7 I've spent a fair amount of teaching time studying              8 and teaching occupational safety and health              9 examples that distinguish between workplace              10 accidents and workplace diseases, and long              11 latencies for studying those types of association              12 are frequently an obstacle to defend epidemiology,              13 and many of those cases involve cancer.              14 Q. Do you have an opinion in this case              15 as far as the latency between talcum powder use              16 and ovarian cancer development?              17 A. No.              18 Q. Do you have any opinion as to the              19 minimum talcum powder use that is -- that is              20 required to increase -- that will increase the              21 risk of ovarian cancer?              22 A. No.              23 DR. THOMPSON: Object to form.              24 BY MR. HEGARTY:</p>
<p style="text-align: right;">Page 403</p> <p>1 being truthful in making those statements?              2 DR. THOMPSON: Object to form.              3 THE WITNESS: Could you ask              4 that perhaps a slightly different way?              5 BY MR. HEGARTY:              6 Q. Sure.              7 To the extent an expert for Johnson              8 &amp; Johnson said in their report or their testimony              9 that talcum powder use is safe, is it your              10 contention that they're not being truthful in              11 making those statements?              12 DR. THOMPSON: Object to form.              13 BY MR. HEGARTY:              14 Q. In making that statement?              15 A. I simply view it as their expressed              16 opinion.              17 Q. Which you are doing here today              18 yourself, correct?              19 A. Indeed.              20 Q. Now we can turn over to paragraph 80              21 of your report.              22 You reference in that paragraph what              23 you call "long latency for carcinogenesis."              24 Do you see that?</p>	<p style="text-align: right;">Page 405</p> <p>1 Q. In your opinion, though, based on              2 this paragraph, it is impossible to substantiate              3 the safety of talc, correct?              4 DR. THOMPSON: Object to form.              5 THE WITNESS: Could I ask you              6 to repeat that question?              7 BY MR. HEGARTY:              8 Q. Sure.              9 Based on the statements you're              10 making about the -- well, you actually say that              11 expeditious -- let me start over again.              12 A. Ah. Now I know.              13 Q. "Expedition and definitive studies              14 to determine safety are impossible given long              15 latency for carcinogenesis and other research              16 challenges."              17 So aren't you saying there that it              18 is impossible to substantiate the safety of talc              19 because of the latency period?              20 DR. THOMPSON: Object to form.              21 THE WITNESS: I'm not saying              22 that. From an ex ante position, all of              23 this is possible, as it would be for any              24 cosmetic ingredient or cosmetic product.</p>

<p style="text-align: right;">Page 406</p> <p>1 That paragraph that you</p> <p>2 referenced is the continuation of the</p> <p>3 paragraph above, which is explaining why</p> <p>4 this situation does not under any</p> <p>5 circumstances fall within the exception</p> <p>6 of the regulation provides to the</p> <p>7 obligation to provide the "safety not</p> <p>8 determined" warning.</p> <p>9 BY MR. HEGARTY:</p> <p>10 Q. But you mention that you have taught</p> <p>11 with regard to latency in cancer.</p> <p>12 Is it your testimony that with a</p> <p>13 possible -- well, let me back up.</p> <p>14 You agree that latency as it relates</p> <p>15 to exposure and a disease assumes that the</p> <p>16 exposure causes the disease, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And in your opinion, how do you</p> <p>19 substantiate the safety of a product with the</p> <p>20 possibility of a long latency period?</p> <p>21 DR. THOMPSON: Object to form.</p> <p>22 THE WITNESS: There is always</p> <p>23 the possibility of a long latency period.</p> <p>24 We could pick any cosmetic,</p>	<p style="text-align: right;">Page 408</p> <p>1 Q. You say in the first paragraph:</p> <p>2 "As stated previously beginning in</p> <p>3 the 1960s" -- I'm sorry. You state in the first</p> <p>4 sentence:</p> <p>5 "As stated previously, beginning in</p> <p>6 the 1960s, the scientific literature presented</p> <p>7 evidence of talcum powder containing asbestos and</p> <p>8 fiber talc -- fibrous talc."</p> <p>9 You go on to say:</p> <p>10 "Johnson &amp; Johnson testing results</p> <p>11 and internal discussions also demonstrate the</p> <p>12 presence of and concern about the presence of</p> <p>13 asbestos in talc fibers."</p> <p>14 Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. What documents have you reviewed</p> <p>17 that show internal discussions within Johnson &amp;</p> <p>18 Johnson that demonstrate the presence of and</p> <p>19 concern about the presence of asbestos and talc</p> <p>20 fibers?</p> <p>21 A. The presence of that exhibit that we</p> <p>22 discussed earlier that had the Hopkins assessments</p> <p>23 of the various prior testing that Johnson &amp;</p> <p>24 Johnson had done. In terms of concern about the</p>
<p style="text-align: right;">Page 407</p> <p>1 call it X, and any latent disease, call</p> <p>2 it Y, and at the moment you begin to sell</p> <p>3 the product, you do what you can to</p> <p>4 substantiate the safety of the product,</p> <p>5 and you do not observe the disease while</p> <p>6 occurring and you regard having done</p> <p>7 something to the product that</p> <p>8 substantiated safe.</p> <p>9 But as information surfaces,</p> <p>10 as it has in abundance with respect to</p> <p>11 talcum powder exposure and ovarian</p> <p>12 cancer, that calls into question your</p> <p>13 prior substantiation determination and</p> <p>14 that's when you have the obligation to</p> <p>15 disclose.</p> <p>16 BY MR. HEGARTY:</p> <p>17 Q. So it's not your testimony then</p> <p>18 before a cosmetic manufacturer can sell a product,</p> <p>19 they have to weigh -- they have to test it for 10,</p> <p>20 20, 30, 40 years?</p> <p>21 A. Certainly not.</p> <p>22 Q. If you could look at paragraph 112</p> <p>23 of your expert report.</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 409</p> <p>1 presence, I did early in my engagement review some</p> <p>2 internal corporate documents that I read as</p> <p>3 expressing concern.</p> <p>4 Q. Do you cite any of those corporate</p> <p>5 documents in the body of your report?</p> <p>6 A. No.</p> <p>7 Q. If we turn over to paragraph 121 of</p> <p>8 your report, you say in that paragraph:</p> <p>9 "In sum, Johnson &amp; Johnson</p> <p>10 manipulated asbestos testing and associated</p> <p>11 publicity so that 'none detectable' would be</p> <p>12 interpreted as 'none.'"</p> <p>13 What associated publicity are you</p> <p>14 referring to in that paragraph?</p> <p>15 A. I'm -- I'm referring to things that</p> <p>16 such as the Facts About Talc website, admittedly</p> <p>17 not a comprehensive overview. But in addition the</p> <p>18 Koberna deposition testimony regarding marketing</p> <p>19 activities, you know, included marketing efforts</p> <p>20 that -- that certainly did not refer to the</p> <p>21 possibility of adulteration of asbestos.</p> <p>22 Q. And whose deposition did you just</p> <p>23 mention?</p> <p>24 A. Koberna.</p>

<p style="text-align: right;">Page 410</p> <p>1 Q. Can you show me that in your                  2 reliance materials, the exhibit we've been looking                  3 at?                  4 A. I believe the deposition was                  5 subsequent to the submission of the report.                  6 So -- so perhaps I guess the more                  7 accurate way to give my answer is, I didn't                  8 consider it in drafting the report, but it was                  9 subsequently made available to me.                  10 Q. And how do you spell the name that                  11 you're referring to?                  12 A. I think it's K-o-b-e-r-n-a. It was                  13 an uncompleted deposition and, frankly, I found it                  14 incredibly interesting given my mom's career in                  15 advertising.                  16 MR. HEGARTY: I'm going to                  17 mark as Exhibit 23 a folder of                  18 supplemental materials that we were                  19 provided by counsel for the plaintiffs in                  20 this case.                  21 (Document marked for                  22 identification as Sage Exhibit 23.)                  23 BY MR. HEGARTY:                  24 Q. And it's just a printout of the page</p>	<p style="text-align: right;">Page 412</p> <p>1 are you able to identify -- let me back up.                  2 Have you received additional                  3 materials from plaintiffs' counsel since you                  4 signed your report on July 2, 2021?                  5 A. I said before that I had, and I                  6 repeat that answer.                  7 Q. You identified some of those.                  8 But do you know whether all of the                  9 materials you received since July 2, 2021 are in                  10 this Exhibit 23?                  11 A. I have worked with counsel as best                  12 we could to make sure that anything that I saw                  13 subsequently was properly cataloged and properly                  14 shared with your client.                  15 Q. But do you -- are you able to recall                  16 anything else that you have reviewed since you                  17 signed your expert report on July 2, 2021, besides                  18 what you've already provided to us -- to me in                  19 this deposition?                  20 A. Right now, no.                  21 Q. Is there anything else that stands                  22 out to you?                  23 You mentioned that -- you mentioned                  24 some things. You mentioned the Koberna</p>
<p style="text-align: right;">Page 411</p> <p>1 in the matter that they provided to us in a                  2 Dropbox. When you pull up the particular heading                  3 for the supplemental materials, this is what you                  4 can print out.                  5 Do you understand that?                  6 A. Yes.                  7 Q. And do you recall after the initial                  8 supplying of materials to you whether there were                  9 supplemental materials provided to you at a later                  10 date?                  11 A. As I said at some point earlier                  12 today, I've continued to -- to research the basis                  13 for the opinions that I have given, and I've                  14 continued to ask questions again about both sides                  15 of the issue.                  16 And one of the areas that I do not                  17 feel I had sufficiently explored for the original                  18 report were marketing activities because there was                  19 not a lot of content I could review for that, and                  20 this was a subsequent deposition. And so when it                  21 came along, I was very pleased to receive it and                  22 to read it in full.                  23 It should have been provided to you.                  24 Q. What materials have you received or</p>	<p style="text-align: right;">Page 413</p> <p>1 deposition.                  2 Anything else you recall -- well,                  3 let me ask it this way.                  4 Is there anything else you are                  5 relying on or using as a resource material for                  6 purposes of what you testified here today that you                  7 have received since signing your July 2, 2021                  8 expert report?                  9 A. Everything that I have considered is                  10 something that I have discussed with plaintiffs'                  11 counsel in order so that that could be properly                  12 listed and shared as required. I don't know more                  13 than that.                  14 Q. Is there anything that you know of                  15 sitting here today that you rely upon or you                  16 considered since your July 2, 2021 report was                  17 signed that you know we have not talked about                  18 today, that you have not referenced or I have not                  19 asked about?                  20 A. Certainly -- certainly anything that                  21 -- that I can think of and that was significant                  22 enough that it matters to me sitting here is                  23 something that you've seen or received.                  24 Q. We talked about the CIR and are you</p>

<p style="text-align: right;">Page 414</p> <p>1 aware that the -- or is it --</p> <p>2 Do you have any opinion with regard</p> <p>3 to the way that CIR is funded, that is, that you</p> <p>4 find to be part of your opinions as it relates to</p> <p>5 the CIR review for talc and ovarian cancer -- I'm</p> <p>6 sorry -- talc and the safety of talc?</p> <p>7 MS. PARFITT: Objection.</p> <p>8 Form.</p> <p>9 THE WITNESS: I do not</p> <p>10 currently recall the details of the CIR</p> <p>11 funding support. The generally close</p> <p>12 connection between the CIR, the trade</p> <p>13 association, and the trade association's</p> <p>14 members is concerning to me, as it was</p> <p>15 concerning to FDA in that 1998 internal</p> <p>16 review.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. You looked at the -- the document</p> <p>19 setting out the CIR analysis by Fiume, correct?</p> <p>20 A. If you could provide it, I would</p> <p>21 appreciate it.</p> <p>22 MR. HEGARTY: I do have it.</p> <p>23 I'll mark as Exhibit No. 24</p> <p>24 the Fiume article.</p>	<p style="text-align: right;">Page 416</p> <p>1 similar underlying data and reached rather</p> <p>2 different conclusions. And I set forth in that</p> <p>3 comparison a number of areas of concern, but the</p> <p>4 detail that exists in my Appendix 2 is not detail</p> <p>5 that I could reproduce for you right now.</p> <p>6 Q. And is it your -- did you read the</p> <p>7 entirety of the CIR safety assessment of talc as</p> <p>8 used in cosmetics?</p> <p>9 A. I read as much of it as I was</p> <p>10 capable of reading at the time. (Laugh).</p> <p>11 Q. And understand and understood.</p> <p>12 But my question is: Did you read</p> <p>13 the entirety of it?</p> <p>14 A. I made a point of reading it,</p> <p>15 seriously.</p> <p>16 Q. Oh, did you read every page, every</p> <p>17 word on every page?</p> <p>18 A. No.</p> <p>19 Q. Did you read every word of every</p> <p>20 page of the Health Canada safety assessment?</p> <p>21 A. No, but both of these are -- are</p> <p>22 materials that I considered highly relevant and</p> <p>23 important to my assessment and opinions, and I</p> <p>24 engaged seriously with both of them.</p>
<p style="text-align: right;">Page 415</p> <p>1 (Document marked for</p> <p>2 identification as Sage Exhibit 24.)</p> <p>3 BY MR. HEGARTY:</p> <p>4 Q. Do you recall reading that article?</p> <p>5 A. (Reviews document.)</p> <p>6 Yes.</p> <p>7 Q. Do you know any of the individuals</p> <p>8 whose names are listed at the top of that exhibit?</p> <p>9 A. No.</p> <p>10 Q. Do you have any criticism of the</p> <p>11 capabilities of any of the individuals listed at</p> <p>12 the top of that article?</p> <p>13 MS. PARFITT: Objection to</p> <p>14 form.</p> <p>15 THE WITNESS: I wouldn't have</p> <p>16 a basis for criticism.</p> <p>17 BY MR. HEGARTY:</p> <p>18 Q. Is it your opinion that the CIR</p> <p>19 panel did not do a proper analysis as reflected or</p> <p>20 as set out in this -- this document?</p> <p>21 A. So the way I would answer that</p> <p>22 question would be to reference Appendix 2 in my</p> <p>23 report, which is a specific comparison of the CIR</p> <p>24 and Health Canada assessments, because they took</p>	<p style="text-align: right;">Page 417</p> <p>1 Q. And if you look over Appendix 1 of</p> <p>2 your report, which is "Summary of scientific</p> <p>3 evidence relating to talcum powder and its</p> <p>4 association with ovarian cancer"?</p> <p>5 A. Yes.</p> <p>6 Q. There's a section there where you</p> <p>7 talk about some studies dealing with migration of</p> <p>8 particles from the vagina to the ovaries.</p> <p>9 Do you see that section paragraph 7?</p> <p>10 A. Yes.</p> <p>11 Q. Before this, before being hired to</p> <p>12 serve as an expert witness in this case, had you</p> <p>13 ever in any of your work looked at articles</p> <p>14 regarding the migration of particles within</p> <p>15 tissue?</p> <p>16 A. Certainly, but I couldn't specify</p> <p>17 which. My father back in the 1950s did studies of</p> <p>18 lymphatic spread using colloidal gold particles.</p> <p>19 Q. Well, I wasn't asking about what</p> <p>20 your father did.</p> <p>21 I asked you if you had any</p> <p>22 experience in looking at the migration of</p> <p>23 particles within the body prior to being hired as</p> <p>24 an expert in this case.</p>

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1 A. In connection with my -- my medical  
 2 education and my medical interests, from time to  
 3 time. I'm sorry.  
 4 Q. And had you reviewed any of the  
 5 studies that you cite in this part of your report  
 6 prior to being -- that is, in paragraph 7 -- prior  
 7 to being contacted to serve as an expert witness  
 8 in this case?  
 9 A. No.  
 10 Q. You had -- we had designated as  
 11 Exhibit No. 11 the notebook of materials that you  
 12 have in front of you?  
 13 A. Yes.  
 14 Q. Do you recall that?  
 15 I want to go ahead and designate as  
 16 Exhibit No. 25 the loose materials that you have  
 17 brought with you.  
 18 A. Okay.  
 19 (Document marked for  
 20 identification as Sage Exhibit 25.)  
 21 BY MR. HEGARTY:  
 22 Q. So would you keep that together --  
 23 A. Yes.  
 24 Q. -- as a separate set of documents?

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1 A. Yes. I'm trying -- I'm trying to  
 2 keep it separate from.  
 3 Q. Keep it separate from the exhibits  
 4 that --  
 5 A. Yeah. I think we're okay on that.  
 6 I'll do my -- I do my -- I don't think anything  
 7 has got mixed up yet but...  
 8 Q. Well, anything that you have over  
 9 there should be marked as an exhibit sticker. I  
 10 want to make sure that you have anything --  
 11 A. Right.  
 12 Q. -- that you brought with you loose  
 13 that was not marked as an exhibit --  
 14 A. Correct.  
 15 Q. -- we'll designate as Exhibit  
 16 No. 25.  
 17 A. Certainly.  
 18 Q. And with regard to the loose  
 19 materials and the notebook, are those all the  
 20 materials that you brought with you to the  
 21 deposition?  
 22 A. Yes.  
 23 Q. And can I look just for a second at  
 24 your notebook?

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1 A. Sure. This is without the loose  
 2 materials, right?  
 3 Q. Correct.  
 4 (Reviews documents.)  
 5 The underlining in the notes that  
 6 are in your report, are those or those are from  
 7 you, correct?  
 8 A. In the report, in the tab containing  
 9 the report, yes. The dots on the CV are also from  
 10 me.  
 11 Q. And when did you make these notes  
 12 and these underlining in relation to the  
 13 deposition?  
 14 A. Roughly -- well, since we  
 15 rescheduled, it would have been, roughly, a week  
 16 before the original scheduled date.  
 17 Q. And I'm almost finished.  
 18 (Reviews document.)  
 19 I'll give that back to you.  
 20 And can you hand me the loose  
 21 materials that we designated as Exhibit No. 25?  
 22 A. Yes. Here. My report is in --  
 23 Q. Yeah.  
 24 A. -- a couple of these.

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1 Q. A couple of exhibits are there.  
 2 A. I think this --  
 3 Q. Looks like more than a couple.  
 4 A. Yeah, I think it's that.  
 5 Q. And with regard to the FDA's  
 6 cosmetic program that you've been talking about,  
 7 was this a document that plaintiffs' counsel  
 8 provided to you?  
 9 A. Yes.  
 10 Q. This is actually an exhibit, too.  
 11 A. Oh, sorry.  
 12 Q. So is that. And that.  
 13 A. Yeah, this was an exhibit, also.  
 14 Q. And I believe those are all the  
 15 questions I have. Thank you, Doctor.  
 16 A. My pleasure.  
 17 (Discussion off the record)  
 18 DR. THOMPSON: I have a few  
 19 questions, but before that a  
 20 housekeeping. I believe you have the  
 21 supplemental reliance list.  
 22 MR. HEGARTY: You thought you  
 23 had sent us a list?  
 24 MS. PARFITT: Right because



<p style="text-align: right;">Page 422</p> <p>1 the NCI article that you talked about</p> <p>2 earlier, the Koberna, all of that, that's</p> <p>3 all on there. That, hopefully, will</p> <p>4 clarify. That may have happened when,</p> <p>5 you know, the first deposition was</p> <p>6 scheduled and then maybe...</p> <p>7 MR. HEGARTY: I did get last</p> <p>8 night a couple of articles by e-mail.</p> <p>9 MR. TISI: That was different.</p> <p>10 That was different.</p> <p>11 MR. HEGARTY: That was</p> <p>12 different.</p> <p>13 DR. THOMPSON: No. This was</p> <p>14 done -- this was done --</p> <p>15 MR. TISI: This was done</p> <p>16 before.</p> <p>17 DR. THOMPSON: -- prior to the</p> <p>18 first scheduled deposition.</p> <p>19 MR. HEGARTY: I don't remember</p> <p>20 seeing it. I'm not saying that you did</p> <p>21 not send it.</p> <p>22 MS. PARFITT: Yeah.</p> <p>23 MR. HEGARTY: But I don't</p> <p>24 remember seeing it.</p>	<p style="text-align: right;">Page 424</p> <p>1 Q. And I'm going to show you this</p> <p>2 exhibit, Dr. Sage, and would you look at that and</p> <p>3 whether you've ever seen that exhibit before right</p> <p>4 now?</p> <p>5 A. The actual -- this actual exhibit I</p> <p>6 don't -- I don't recall, but it may be in my</p> <p>7 materials.</p> <p>8 Q. Would you look at those listing of</p> <p>9 materials and tell me whether you reviewed all of</p> <p>10 them, some of them, none of them?</p> <p>11 A. (Reviews document.)</p> <p>12 Several of them look familiar.</p> <p>13 Several of them are things that I have read all or</p> <p>14 parts of. Certainly these deposition transcripts</p> <p>15 were made available to me. The Koberna one was</p> <p>16 the one I spent the most time with, and then a lot</p> <p>17 of the ones regarding more recent reform proposals</p> <p>18 and the like I've engaged with extensively.</p> <p>19 Q. Do you recall when it was in</p> <p>20 relation to your expert report when you received</p> <p>21 these additional materials?</p> <p>22 A. It was sporadically after that. It</p> <p>23 wasn't as a batch.</p> <p>24 Q. Have you received any additional</p>
<p style="text-align: right;">Page 423</p> <p>1 Is it okay I mark it as an</p> <p>2 exhibit?</p> <p>3 DR. THOMPSON: Yes.</p> <p>4 MR. HEGARTY: Is it okay if I</p> <p>5 ask the doctor a couple questions about</p> <p>6 it when you're done? Or I can do it</p> <p>7 right now.</p> <p>8 DR. THOMPSON: No. You can go</p> <p>9 ahead do it.</p> <p>10 MR. HEGARTY: I can do it</p> <p>11 right now.</p> <p>12 DR. THOMPSON: That was in his</p> <p>13 notebook also but that's a separate copy.</p> <p>14 MR. HEGARTY: Okay. Yeah. It</p> <p>15 would be helpful if I could just clean</p> <p>16 that and make a record of it.</p> <p>17 (Discussion off the record).</p> <p>18 MR. HEGARTY: So I'm marking</p> <p>19 as Exhibit No. 26 the list of materials</p> <p>20 that Dr. Thompson provided to me that she</p> <p>21 indicated had been provided to us before.</p> <p>22 (Document marked for</p> <p>23 identification as Sage Exhibit 26.)</p> <p>24 BY MR. HEGARTY:</p>	<p style="text-align: right;">Page 425</p> <p>1 materials from plaintiffs' counsel since or in the</p> <p>2 last two weeks?</p> <p>3 A. Not that I recall.</p> <p>4 MR. TISI: Although we did</p> <p>5 send you stuff last night, right?</p> <p>6 BY MR. HEGARTY:</p> <p>7 Q. You mentioned that you had read some</p> <p>8 of the transcript of Koberna.</p> <p>9 Did you read the trial transcripts</p> <p>10 of the Cadagin case that are referenced here?</p> <p>11 A. They were sent to me. I don't</p> <p>12 believe I read them.</p> <p>13 Q. And did you ask for any of these</p> <p>14 materials?</p> <p>15 A. I asked for a lot of these</p> <p>16 materials, not by name, but I asked for -- I asked</p> <p>17 for the Koberna materials and anything else</p> <p>18 related to marketing. I asked for a lot of the</p> <p>19 reform efforts. And I asked for, you know,</p> <p>20 updated scientific literature. This was, I'm</p> <p>21 sure, provided in due course because of that</p> <p>22 request.</p> <p>23 Q. Did you read all the scientific</p> <p>24 literature that's referenced in this exhibit?</p>

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1 A. Not -- not all of it.  
 2 Q. In looking at these articles, can  
 3 you tell me which of these you did read?  
 4 A. (Reviews document.)  
 5 Sitting here right now, I can't.  
 6 MR. HEGARTY: Okay. All  
 7 right. Thank you.  
 8 EXAMINATION  
 9 DR. THOMPSON: Let me go ahead  
 10 and mark one of the documents that you  
 11 brought with you that was loose,  
 12 Dr. Sage, and this is the "FDA Cosmetics  
 13 Program: Current Projects and Resources  
 14 and a Discussion of the 'Model' Program,  
 15 FDA Cosmetics Mission Statement."  
 16 (Document marked for  
 17 identification as Sage Exhibit 28.)  
 18 BY DR. THOMPSON:  
 19 Q. Did you consider this document in  
 20 forming -- relating the opinions that you gave  
 21 today?  
 22 A. Yes.  
 23 Q. Is it confirmatory of the opinions  
 24 that you provided in your report?

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1 A. Yes, it is.  
 2 Q. And is it confirmatory of the  
 3 opinions that you've offered here today as well?  
 4 A. Yes.  
 5 Q. You mentioned earlier that you  
 6 looked at the Johnson & Johnson website that was  
 7 Facts About Talc.  
 8 And did that website include  
 9 corporate documents?  
 10 A. Yes.  
 11 Q. And were those documents selected by  
 12 Johnson & Johnson to include on the website?  
 13 A. Yes.  
 14 Q. Did you review the documents from  
 15 that website?  
 16 A. Yes, some of them. I don't recall  
 17 how many there were but, yes.  
 18 Q. And, Dr. Sage, were the opinions in  
 19 your report and the opinions that you gave today  
 20 given to a reasonable degree of scientific and  
 21 professional certainty?  
 22 A. Yes, they were.  
 23 Q. And do you reserve the right to  
 24 amend or supplement your report if new information

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1 becomes available?  
 2 A. I do reserve that right.  
 3 Q. Would that include any review of  
 4 defense expert reports in the regulatory area?  
 5 A. Yes, certainly.  
 6 DR. THOMPSON: No further  
 7 questions.  
 8 MR. HEGARTY: No further  
 9 questions.  
 10  
 11 (Time noted: 5:33 p.m.)  
 12  
 13 \* \* \*  
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1 ERRATA SHEET  
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<p style="text-align: right;">Page 430</p> <p>1       DECLARATION UNDER PENALTY OF PERJURY</p> <p>2</p> <p>3</p> <p>4           I declare under penalty of</p> <p>5 perjury that I have read the entire transcript of</p> <p>6 my Deposition taken in the captioned matter</p> <p>7 or the same has been read to me, and</p> <p>8 the same is true and accurate, save and</p> <p>9 except for changes and/or corrections, if</p> <p>10 any, as indicated by me on the DEPOSITION</p> <p>11 ERRATA SHEET hereof, with the understanding</p> <p>12 that I offer these changes as if still under</p> <p>13 oath.</p> <p>14</p> <p>15           Signed on the _____ day of</p> <p>16 _____, 2021.</p> <p>17</p> <p>18 _____</p> <p>19       WILLIAM M. SAGE, MD, JD</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	
<p style="text-align: right;">Page 431</p> <p>1           CERTIFICATE OF REPORTER</p> <p>2 DISTRICT OF COLUMBIA    )</p> <p>3       I, DENISE DOBNER VICKERY, CRR/RMR and</p> <p>4 Notary Public, hereby certify the witness was by</p> <p>5 me first duly sworn to testify to the truth; that</p> <p>6 the said deposition was recorded stenographically</p> <p>7 by me and thereafter reduced to printing under my</p> <p>8 direction; and that said deposition is a true</p> <p>9 record of the testimony given by said witness.</p> <p>10       I certify the inspection, reading and</p> <p>11 signing of said deposition were NOT waived by</p> <p>12 counsel for the respective parties and by the</p> <p>13 witness; and that I am not a relative or employee</p> <p>14 of any of the parties, or a relative or employee</p> <p>15 of either counsel, and I am in no way interested</p> <p>16 directly or indirectly in this action.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21           Denise Dobner Vickery, CRR/RMR</p> <p>22           Notary Public in and for the</p> <p>23           District of Columbia</p> <p>24   My Commission expires: February 28, 2023</p>	